

Special Commission of  
Inquiry into the Greyhound  
Racing Industry in New  
South Wales

**Report | Volume 3**

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## 20 Integrity: drug use, testing and enforcement

### Relevant statutory provisions and rules

- 20.1 Pursuant to s. 9(2) of the *Greyhound Racing Act 2009* (“the Act”), Greyhound Racing NSW (“GRNSW”) relevantly has the functions of, *inter alia*, controlling, supervising and regulating greyhound racing in NSW, and initiating, developing and implementing policies considered conducive to the promotion, strategic development and welfare of greyhound racing in NSW.<sup>1</sup> Section 10(1) of the Act confers a broad power on GRNSW to do “all things that may be necessary or convenient to be done for or in connection with the exercise of its functions.”
- 20.2 Section 10(2) provides that, without limiting subs. (1), GRNSW is empowered to supervise the activities of greyhound racing clubs, registered participants and all other persons engaged in or associated with greyhound racing, and it may inquire into and deal with any matter relating to greyhound racing.<sup>2</sup>
- 20.3 Section 21 provides that GRNSW may, in accordance with the GRNSW Greyhound Racing Rules (“the Rules”), exercise specified powers including to:
- a) cancel the registration of any greyhound or any owner, trainer or other person associated with greyhound racing,
  - b) disqualify, either permanently or temporarily, any greyhound or any owner, trainer or other person associated with greyhound racing,
  - c) prohibit any person from participating in or associating with greyhound racing in any specified capacity,
  - d) prohibit any greyhound from competing in any greyhound race or trial,
  - e) impose fines not exceeding 200 penalty point [\$22,000] on any owner, trainer or other person associated with greyhound racing for breaches of the Rules, and
  - f) suspend any right to privilege conferred by the Act or Rules on any owner, trainer or other person associated with greyhound racing.<sup>3</sup>
- 20.4 Section 26(1)(a) of the Act provides that the Greyhound Racing Integrity Auditor (“Integrity Auditor”) has primary oversight of those aspects of the functions of GRNSW that relate to stewards, drug testing and control and registration. The Integrity Auditor also has a primary function to provide advice to GRNSW on those matters.<sup>4</sup> The role of the Integrity Auditor is discussed more fully in Chapter 31.
- 20.5 Under s. 23(1) of the Act, GRNSW has a wide power to make rules “for or with respect to the control and regulation of greyhound racing”.

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<sup>1</sup> The Act s. 9(2)(a), s. 9(2)(c).

<sup>2</sup> The Act s. 10(2)(b), s. 10(2)(c).

<sup>3</sup> The Act s. 21(1)(a)-(g).

<sup>4</sup> The Act s. 26(1)(b).

20.6 The Rules deal with prohibited substances explicitly, conferring on GRNSW various powers to test for, and enforce penalties in relation to, prohibited substances. The Rules that relate specifically to prohibited substances include:

**Table 20.1 GRNSW rules relating to prohibited substances**

GRNSW rules relating to prohibited substances	
1	Definition of "prohibited substance"
LR1A	Definition of "Prohibited Substance" (Local Rule)
1	Definition of "Exempted substance"
LR1B	Additional exempted substance "prednisolone" (Local Rule)
LR1C	Additional exempted substance "Procaine" (Local Rule)
79	Testing and swabbing
79A	Out of Competition Testing
80	Testing/ swabbing procedure
81	Certification of analysis
82	Notification of positive analysis
LR82	Restrictions on owners and trainers notified of positive analysis
83	Greyhound to be free of prohibited substances
84	Possession of prohibited substance
84A	Treatment records to be kept
84B	Possession on course
85	Possession of prohibited substance for personal use

Source: GRNSW Greyhound Racing Rules

20.7 Aspects of these Rules are considered further below.

## GRNSW's drug classification system

20.8 By at least October 2012, GRNSW had developed a system in which common prohibited substances are placed into one of five categories.<sup>5</sup> The five categories are set out in the GRNSW "Category of Drugs" chart as follows:

**Table 20.2 GRNSW Categories of drugs**

GRNSW Categories of drugs	
Category 1	Prohibited substances that have the ability to negatively impact the performance of a greyhound. These substances are commonly known as "stoppers".
Category 2	All prohibited substances that are listed under GAR79A. This would also include such substances listed as illegal substances under the Standard for the Uniform Scheduling Drugs and Poisons (Cth), as amended from time to time, inclusive of NSW legislation regarding those substances.
Category 3	All forms of steroids.
Category 4	All other substances that have the ability to improve or impact racetrack performance and which are not included in categories 1, 2, 3 and 5.
Category 5	All substances that are registered in Australia for veterinary use and have accepted therapeutic benefit to the greyhound. Products registered for human use in Australia that may have therapeutic benefits are also included in this category.

Source: GRNSW website, "Category of Drugs" chart

20.9 The GRNSW Category of Drugs chart also provides examples of prohibited substances that fall into each of the five drug categories.

<sup>5</sup> GRNSW website, "GRNSW Penalty System": <<http://www.thedogs.com.au/DPage.aspx?spid=137&id=244>> (accessed 30 May 2016).

**Table 20.3 Prohibited substance examples**

Prohibited substance examples				
Category 1	Category 2	Category 3	Category 4	Category 5
<ul style="list-style-type: none"> <li>• Chlorbutanol</li> <li>• Atenol</li> <li>• Timalol</li> <li>• Alprazolam</li> <li>• Pentobarbitol</li> </ul>	<ul style="list-style-type: none"> <li>• EPO</li> <li>• GnRH</li> <li>• ITTP</li> <li>• Amphetamine</li> <li>• Cocaine</li> <li>• Benzoyllecognine</li> </ul>	<ul style="list-style-type: none"> <li>• Boldenone</li> <li>• Nandrolone</li> <li>• Androsta-1,4-diene-3,17-dione</li> <li>• Methandriol</li> <li>• Alpha-hydroxystanzol</li> </ul>	<ul style="list-style-type: none"> <li>• Caffeine</li> <li>• Kynoselen</li> <li>• Morphine</li> <li>• Codeine</li> <li>• 17-methylmorphinan</li> <li>• Ephedrine</li> <li>• Pseudo-ephedrine</li> </ul>	<ul style="list-style-type: none"> <li>• Procaine</li> <li>• Lignocaine</li> <li>• Prednisone</li> <li>• Minoxidil</li> <li>• Dexamethasone</li> <li>• Tolfenamic Acid</li> <li>• Phenylbutazone</li> <li>• Ibuprofen</li> <li>• Firocoxib</li> <li>• Pholcodine</li> <li>• Nortriptyline</li> <li>• Prilocaine</li> <li>• Prednisolone</li> <li>• Hydrocortisone Hemisuccinate</li> <li>• Naproxen</li> <li>• Tramadol</li> <li>• Piroxicam</li> <li>• Carboxy</li> <li>• Indomethacin</li> <li>• Sotalol</li> <li>• Alprazolam</li> </ul>

Source: GRNSW website, "Category of Drugs" chart

- 20.10 GRNSW states that drugs are placed into the five categories "based on their severity and on advice from GRNSW's Greyhound Welfare and Veterinary Services Unit."<sup>6</sup>
- 20.11 GRNSW stewards are able to use the GRNSW drug classification system, and the associated "GRNSW Penalty Table",<sup>7</sup> to ascertain an appropriate penalty to impose when a prohibited substance is detected. Category 1 (performance inhibiting) drugs attract the most severe penalties when detected, while Category 5 (therapeutic) drugs attract the least severe penalties.<sup>8</sup>
- 20.12 For ease of reference, the "GRNSW Penalty System" information sheet, the associated "Category of Drugs" chart and the GRNSW Penalty Table are reproduced as Appendix O to this Report.
- 20.13 Broadly speaking, the enforcement scheme used by stewards works as follows:
- Category 5, Category 4 and some Category 3 drugs:
    - Trainer is given the option of entering an early guilty plea:
      - Guilty plea = 25% discount.
      - No guilty plea = stewards' inquiry and 25% discount forfeited.
  - Higher category drugs and/or trainers with a poor record:
    - Trainer is subject to an inquiry with no option for an early guilty plea.<sup>9</sup>

<sup>6</sup> Ibid.

<sup>7</sup> GRNSW website, "GRNSW Penalty Table": <[http://www.thedogs.com.au/Uploads/Userfiles/GRNSWPenaltyTable\(1\).pdf](http://www.thedogs.com.au/Uploads/Userfiles/GRNSWPenaltyTable(1).pdf)> (accessed 30 May 2016).

<sup>8</sup> GRNSW website, "GRNSW Penalty System": <<http://www.thedogs.com.au/DPage.aspx?spid=137&id=244>> (accessed 30 May 2016).

<sup>9</sup> Ibid.

20.14 The GRNSW Penalty Table sets out the penalty starting point and the aggravating and mitigating factors that stewards may take into account when determining an appropriate penalty for each category of prohibited substance.<sup>10</sup> The GRNSW penalty enforcement regime is discussed further below.

## Types of prohibited substances used

20.15 Different types of drugs are administered to greyhounds for varying purposes. Broadly speaking, drugs are relevantly administered to greyhounds for the purpose of enhancing performance, inhibiting performance, or for therapeutic reasons.

20.16 In December 2015, the Commission compulsorily obtained information from GRNSW in the form of a breakdown of the top ten prohibited substances detected between financial years 2010 and 2016 (up to the date of the Order). The number one substance detected – by a considerable margin – was caffeine and its metabolites.<sup>11</sup> The top ten detected prohibited substances as identified by GRNSW are set out in the following table. The table also indicates the category into which each substance falls (where known).

**Table 20.4 Top ten prohibited substances identified by GRNSW: FY10 to FY16 (to December 2015)**

Substance	Times detected	Category
Caffeine and metabolites	44	4
5beta-androstane-3alpha, 17beta-diol	22	3
Heptaminol	10	not known
Procaine	10	5
6alpha-hydroxystanozolol	9	3
Pholcodine	9	5
Firoxocib	9	5
Amphetamine	8	2
Nadolone	7	3
Meloxicam	7	not known (probably 5)

Source: GRNSW Response to Order 25 dated 22 December 2015, pp.4-6

## Performance enhancing drugs

20.17 A range of performance-enhancing drugs have been administered to greyhounds. Three of the most common types to be detected are amphetamines, caffeine and steroids.

### Amphetamines

20.18 As noted, amphetamines rank within the top ten prohibited substances identified by GRNSW. Following one GRNSW inquiry in July 2014, the trainer was disqualified for nine months as a result of a urine sample that contained amphetamine and methyl-amphetamine (commonly known as “ice”).<sup>12</sup>

<sup>10</sup> GRNSW website, “GRNSW Penalty Table”: <[http://www.thedogs.com.au/Uploads/Userfiles/GRNSWPenaltyTable\(1\).pdf](http://www.thedogs.com.au/Uploads/Userfiles/GRNSWPenaltyTable(1).pdf)> (accessed 30 May 2016).

<sup>11</sup> GRNSW, Response to Order 25 dated 22 December 2015, pp. 4-6.

<sup>12</sup> Article “Sydney Swain Disqualified” by GRNSW, 17 July 2014, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=5291>> (accessed 30 May 2016).

20.19 In another case where amphetamine was detected, the responsible trainer was disqualified for 12 months.<sup>13</sup>

### **Caffeine**

20.20 The presence of caffeine and its metabolites in greyhounds ranks as the number one prohibited substance that GRNSW detected through in-competition testing between the financial years 2010 and 2016.

20.21 GRNSW stewards' inquiries into the detection of caffeine in greyhounds have encountered a variety of explanations by owners and trainers as to its presence. While such explanations do not absolve a person of their obligations under the Rules, if accepted they may be relevant to penalty. These have included the following:

- A product called "EPO Canine", which had been shown to contain caffeine, had been administered to the dog.<sup>14</sup>
- A powder (used in martial arts training) had been sprinkled over the greyhounds' feeds to assist with muscle repatriation and was found to have caffeine in it.<sup>15</sup>
- A drink containing caffeine had been accidentally knocked over inside a vehicle and the greyhound had consumed some of the spilt drink.<sup>16</sup>
- Greyhounds had been given some chocolate-flavoured ice cream for hydration purposes that contained cocoa and therefore caffeine.<sup>17</sup>
- A "Guarana Blaster" (meant for human consumption) had been given to a greyhound.<sup>18</sup>
- Green tea had been given to greyhounds in food preparation.<sup>19</sup>
- "No Doze" tablets had been given to the greyhound by the trainer's father without the trainer's consent.<sup>20</sup>

### **Erythropoietin**

20.22 Erythropoietin ("EPO") is a hormone produced naturally by the kidneys. It stimulates red blood cell production in the bone marrow, which increases the level of oxygen that the blood is able to

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<sup>13</sup> Article "Howard Disqualified" by GRNSW, 19 May 2014, *GRNSW website*:

<<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=5087>> (accessed 30 May 2016); see also article "Righetti Disqualified" by GRNSW, 20 June 2014, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=5213>> (accessed 30 May 2016); Trainer David Righetti was disqualified indefinitely under R 95 relative to R 83(2) for his repeated failure to respond to correspondence relevant to inquiries into findings of amphetamine in urine samples taken from a greyhound in April and August 2012.

<sup>14</sup> Article "Wilson Suspended" by GRNSW, 27 November 2014, *GRNSW website*:

<<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=5806>> (accessed 30 May 2016).

<sup>15</sup> Article "Desira Disqualified" by GRNSW, 22 October 2014, *GRNSW website*:

<<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=5668>> (accessed 30 May 2016).

<sup>16</sup> Article "Hooper Suspended" by GRNSW, 28 May 2014, *GRNSW website*:

<<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=5120>> (accessed 30 May 2016).

<sup>17</sup> Article "Radford Suspended" by GRNSW, 24 July 2014, *GRNSW website*: <<http://www.grnsw.com.au/news/radford-suspended-3143>> (accessed 30 May 2016).

<sup>18</sup> Article "Hanson Disqualified" by GRNSW, 28 June 2012, *GRNSW website*:

<<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=3095>> (accessed 30 May 2016).

<sup>19</sup> GRNSW website, "Inquiry Report – Mr John Smart": <<http://www.thedogs.com.au/uploads/pdfs/120423-Inquiry%20Report%20-%20John%20Smart.pdf>> (accessed: 30 May 2016).

<sup>20</sup> GRNSW website, "Hanson Fined and Suspended": <<http://www.grnsw.com.au/news/hanson-fined-and-suspended-2894>> (accessed 31 May 2016).

absorb. This means that more oxygen can travel to the muscles, which increases stamina and reduces fatigue.<sup>21</sup>

20.23 Artificial EPO (known as “r-HuEPO”) was developed originally to treat people with kidney disease and anaemia. It is recognised that there are potential dangers associated with its use (for example, blood thickening; heart disease; stroke; autoimmune diseases).<sup>22</sup>

20.24 The Commission heard evidence from two greyhound trainers who admitted to having doped their dogs with EPO. This tends to suggest that the use of EPO is not isolated to a single individual, and may be more widespread than GRNSW testing results indicate. Thus, Mr Adam Wallace admitted to using the substance once and also said that he was aware of another trainer who had used it. Mr Wallace told the Commission that he purchased the EPO from a veterinarian for \$150 to \$200.<sup>23</sup> Mr Todd Fear also admitted to having used EPO as a stimulant for greyhounds.<sup>24</sup>

20.25 There have been media reports suggesting that EPO has been around in the greyhound racing industry for some time.<sup>25</sup> The use of EPO has also reportedly been detected in the harness and thoroughbred racing codes.<sup>26</sup>

20.26 In reply to claims that EPO was rife in the greyhound racing industry, Mr Brent Hogan, former Chief Executive of GRNSW, reportedly said in 2012:

We have been testing for EPO in greyhound urine samples for some time over the last two years. We have done 400 specific tests for EPO and in that time haven't come across a positive. That is the same Australia wide. No State to date has found EPO in a sample.<sup>27</sup>

20.27 Mr Hogan also said:

We don't have any credible intelligence which would support the assertion that EPO use is a significant issue in greyhound racing. So in the absence of that intelligence, we're comfortable with our current level of testing, we'll continue with that testing, that will continue to be random.<sup>28</sup>

20.28 At least historically, EPO is said to be difficult to detect in urine because it may no longer be present at the time of testing if the EPO has been administered a few days previously.<sup>29</sup>

20.29 It appears, however, that tests exist (at least in the human competitive sporting context) which combine the screening of blood and urine. In relation to human athletes, an EPO test was first

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<sup>21</sup> National Drug Strategy website, “Performance and Image Enhancing Drugs – Erythropoietin (EPO)”;  
<<http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/content/fs-epo>> (accessed 31 May 2016); National Drug Strategy website, “Performance and Image Enhancing Drugs”:

<[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/content/103616A590917B23CA2575B4001353AC/\\$File/fs\\_epo.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/content/103616A590917B23CA2575B4001353AC/$File/fs_epo.pdf)> (accessed 31 May 2016).

<sup>22</sup> World Anti-Doping Agency website, “EPO Detection”: <<https://www.wada-ama.org/en/questions-answers/epo-detection>> (accessed 31 May 2016).

<sup>23</sup> 28 September 2015: T85.31-86.20.

<sup>24</sup> 29 September 2015: T143.9-13.

<sup>25</sup> Report “Allegations of doping in greyhound racing industry” by Matthew Carney, 9 November 2012, *ABC Lateline*: Transcript at <<http://www.abc.net.au/lateline/content/2012/s3629916.htm>>.

<sup>26</sup> Article “Racing’s dirty secret: New drug Scandal to hit tracks” by Andrew Rule, 11 November 2012, *Herald Sun*: <<http://www.heraldsun.com.au/news/victoria/racings-dirty-secret-new-drug-scandal-to-hit-tracks/story-e6frf7kx-1226514337922>> (accessed 31 May 2016); see also article “How an athlete ran down the drug EPO in harness racing” by Adam Hamilton, 8 October 2009, *The Advertiser*: <<http://www.adelaidenow.com.au/news/how-an-athlete-ran-down-the-drug-epo-in-harness-racing/story-e6frea6u-1225784668521>> (accessed 30 May 2016).

<sup>27</sup> Report “Allegations of doping in greyhound racing industry” by Matthew Carney, 9 November 2012, *ABC Lateline*: Transcript at <<http://www.abc.net.au/lateline/content/2012/s3629916.htm>>.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

developed for use at the Sydney Olympic Games in 2000. That test combined urine and blood samples and was said by the World Anti-Doping Agency to work as follows:

The test, validated by the International Olympic Committee (IOC), was based on the blood and urine matrix. A blood screening was performed first, and a urine test was then used to confirm possible use of EPO.<sup>30</sup>

- 20.30 In the greyhound racing context, Greyhounds Australasia (“GA”) announced in 2009 that it had employed Racing Analytical Services Limited (“RASL”) to review and refine the methodologies associated with detecting EPO, as part of a broader funding package aimed at improving integrity in the area of prohibited substance detection.<sup>31</sup>

### **Steroids**

- 20.31 Steroids account for a significant proportion of the prohibited substances that GRNSW has most commonly detected. While a number of steroid types have been detected in greyhounds (for example, “5beta-androstane-3alpha”, “17beta-diol” and “Nandrolone”), a commonly detected steroid is testosterone.

- 20.32 Under R 24, a greyhound is not permitted to race while in season. Trainers have reportedly been known to circumvent this rule by artificiality administering testosterone to their female greyhounds to keep them “off season”.<sup>32</sup>

- 20.33 In January 2013, GRNSW adopted R 83(6) which provides that it is an offence if an abnormal level of testosterone is found in a bitch’s urine.<sup>33</sup> Before this amendment, there was no penalty for the use of testosterone-based steroids, owing to the absence of any clearly defined “normal range” or threshold.<sup>34</sup> The threshold set by GA, and adopted by GRNSW, in R 83(6) was 10 nanograms, meaning that anything at or above 10 nanograms of testosterone per millilitre of blood in a female greyhound is now a breach of the Rules.

- 20.34 In relation to male greyhounds, in March 2013 the Board of Greyhound Racing Victoria (“GRV”) commissioned what was described as a “world first” study into analytical procedures for detecting testosterone in greyhounds (“the GRV testosterone study”). The GRV testosterone study was conducted jointly by the University of Melbourne’s Faculty of Veterinary and Agricultural Sciences and RASL and was aimed at:

... addressing industry concern that doping of greyhounds with testosterone may occur and that such doping practices are difficult to identify in male greyhounds because of the natural presence of the hormone at greatly varied levels.<sup>35</sup>

- 20.35 The results of the GRV testosterone study were announced in July 2015 and show that it is now possible to differentiate between naturally occurring testosterone and testosterone which has

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<sup>30</sup> World Anti-Doping Agency website, “EPO Detection”: <<https://www.wada-ama.org/en/questions-answers/epo-detection>> (accessed 30 May 2016).

<sup>31</sup> Article “Greyhounds Move to Close the Door on Drug Cheats...Too Late” by Kevin Pitstock, 27 July 2009, *Australian Racing Greyhound*: <<http://www.australianracinggreyhound.com/australian-greyhound-racing/group-listed-greyhound-racing/greyhounds-move-to-close-door-on-drug-cheats-20-years-late/15630>> (accessed 30 May 2016).

<sup>32</sup> Article “An Update From The Stewards” by GRNSW, 17 January 2014, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=4678>> (accessed 30 May 2016); report “Doping, Cruelty and Collusion Claims Dogs Greyhound Racing Industry” by Sean Rubinzstein-Dunlop and Lesley Robinson, 7 November 2013, *ABC 7:30 Report*: <<http://www.abc.net.au/7.30/content/2013/s3869813.htm>>.

<sup>33</sup> GRNSW, Response to Order 1 dated 1 May 2015, p. 13.

<sup>34</sup> Article “Greyhounds Move to Close the Door on Drug Cheats...Too Late” by Kevin Pitstock, 27 July 2009, *Australian Racing Greyhound*: <<http://www.australianracinggreyhound.com/australian-greyhound-racing/group-listed-greyhound-racing/greyhounds-move-to-close-door-on-drug-cheats-20-years-late/15630>> (accessed 30 May 2016).

<sup>35</sup> Article “GRV Announce Evolution in Anti-Doping Investigation Capabilities” by GRV, 27 July 2015, *GRV website*: <<http://www.grv.org.au/news/2015/07/27/grv-announce-evolution-anti-doping-investigation-capabilities/>> (accessed 30 May 2016).

been administered artificially to improve a greyhound's performance. GRV stated that a non-invasive testing procedure was expected to be in place in late 2015.<sup>36</sup>

## Performance inhibiting drugs

20.36 Drugs administered to greyhounds for the purpose of inhibiting performance include all Category 1 substances that have the ability to negatively impact the performance of a greyhound.

### *Beta blockers and barbiturates*

20.37 Beta blockers can be contained in prescription medication intended for humans to reduce blood pressure and have the effect of decreasing hormones like adrenalin.<sup>37</sup> Barbiturates are central nervous system depressants that can operate as effective sedatives and anaesthetics.<sup>38</sup> In past GRNSW stewards' inquiries, the possibility of inadvertent contamination of a greyhound with human medication such as beta blockers and barbiturates has been proffered by trainers, and the possibility of contamination through feed has also been raised.<sup>39</sup> Such explanations do not, however, absolve the trainers of their responsibilities under the Rules.<sup>40</sup>

### *Alcohol*

20.38 Although it does not appear to be commonplace, there are instances where alcohol has been detected in racing greyhounds in NSW for the apparent purpose of decreasing performance.

20.39 Thus, samples taken from two greyhounds in races at The Gardens in February and March 2012 were found to contain alcohol (specifically, ethanol, ethanol glucuronide and ethyl sulphate).<sup>41</sup> The trainer (and breeder) implicated gave evidence at a GRNSW inquiry of having used a topically-applied mixture on the skin of his greyhounds and a methylated-spirit application on the toes and quicks of some greyhounds in his kennels on a regular basis, but GRNSW rejected this explanation. The trainer was banned for seven years on each charge, to be served concurrently.<sup>42</sup> The trainer successfully appealed to the Racing Appeals Tribunal against the severity of his penalty. A penalty of two years and three months' disqualification on each charge was substituted for the seven-year disqualification.<sup>43</sup>

## Therapeutic drugs

20.40 Therapeutic drugs fall into Category 5 of the GRNSW Category of Drugs chart. As noted, all substances registered in Australia for veterinary use, and which have accepted therapeutic

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<sup>36</sup> Article "GRV Announce Evolution in Anti-Doping Investigation Capabilities" by GRV, 27 July 2015, *GRV website*: <<http://www.grv.org.au/news/2015/07/27/grv-announce-evolution-anti-doping-investigation-capabilities/>> (accessed 30 May 2016). The Commission understands that the procedure is not currently in place in Victoria: correspondence dated 8 June 2016 from GRNSW to the NSW Crown Solicitor.

<sup>37</sup> National Health Service United Kingdom website, "Beta Blockers": <<http://www.nhs.uk/conditions/Beta-blockers/Pages/Introduction.aspx>> (accessed 30 May 2016).

<sup>38</sup> Drugs.com website, "Barbiturates": <<http://www.drugs.com/drug-class/barbiturates.html>> (accessed 30 May 2016).

<sup>39</sup> Article "Inquiry Report – Vivian Jones" by GRNSW, 18 October 2013, *GRNSW website*: <<http://www.thedogs.com.au/uploads/pdfs/5C131018%20-%20Inquiry%20Report%20-%20Vivian%20Jones.pdf>> (accessed 30 May 2016); article "Inquiry Report – Mr James Robinson" by GRNSW, 21 January 2010, *GRNSW website*: <<http://www.thedogs.com.au/uploads/pdfs/100121-Inquiry%20Report%20-%20James%20Robinson.pdf>> (accessed 30 May 2016).

<sup>40</sup> Article "Accidental Administration Of Prohibited Substances Won't Work As A Defence" by Damien Osborne, 25 June 2014, *Australian Racing Greyhound*: <<http://www.australianracinggreyhound.com/australian-greyhound-racing/greyhound-racing-regulations/accidental-administration-of-prohibited-substances-wont-work-as-a-defence/52133>> (accessed 30 May 2016).

<sup>41</sup> Article "Trainer cops long ban for drunk dogs" by Craig Kerry, 19 December 2013, *Newcastle Herald*: <<http://www.theherald.com.au/story/1984744/trainer-cops-long-ban-for-drunk-dogs/>> (accessed 30 May 2016).

<sup>42</sup> Article "Inquiry Report – Wayne Vanderburg" by GRNSW, 17 December 2013, *GRNSW website*: <<http://www.thedogs.com.au/uploads/pdfs/131217%20-%20Inquiry%20Report%20-%20Wayne%20Vanderburg.pdf>> (accessed 30 May 2016).

<sup>43</sup> GRNSW website, "Racing Appeals New South Wales Tribunal Decision-Wayne Vanderburg": <<http://www.thedogs.com.au/uploads/pdfs/5C140227-Vanderburg.pdf>> (accessed 30 May 2016).

benefits for greyhounds, fall within Category 5. Further, Category 5 prohibited substances include drugs registered in Australia for human use which may have therapeutic benefits for greyhounds (for example, procaine, ibuprofen, prednisone and naproxen).<sup>44</sup>

20.41 As noted in the table above, a number of the top ten prohibited substances detected by GRNSW are Category 5 substances.

## Policies and procedures relating to detection

### Current policy

20.42 Samples from greyhounds may be conducted pre-race, post-race or out-of-competition. GRNSW's current policy for in-competition swabbing came into effect on 1 September 2009 and applies to all metropolitan and TAB meetings. A key feature of the policy is that it abolished the previous "red marble" (random ballot) system at metropolitan and TAB meetings (although the random ballot system is still used at non-TAB tracks).<sup>45</sup>

20.43 In its submission to the NSW Legislative Council's 2014 Select Committee on Greyhound Racing in NSW ("the Select Committee"), GRNSW outlined its swabbing policy for each of the different categories of race meets, as shown in table 20.5 below:

**Table 20.5 GRNSW swabbing policy for different categories of race meetings**

<b>Category A Wentworth Park Friday/Saturday nights</b>
<ul style="list-style-type: none"> <li>• A minimum of four swabs per meeting at the direction of the stewards.</li> <li>• Placegetters in all Group finals swabbed.</li> <li>• All Group race heat winners.</li> <li>• All eight qualifying greyhounds for finals of Group 1 &amp; 2 events.</li> <li>• All other swabbing at the direction of stewards based on performance.</li> </ul>
<b>Category B and C TAB meetings</b>
<ul style="list-style-type: none"> <li>• Winners of all events with total prizemoney of \$3,000 or more.</li> <li>• Placegetters in all events with total prizemoney of \$5,000 or more.</li> <li>• All Group race final placegetters.</li> <li>• All Group race heat winners.</li> <li>• All other swabbing at direction of stewards based on performance.</li> </ul>
<b>Non-TAB meetings</b>
<ul style="list-style-type: none"> <li>• 1st and 2nd placegetters in all events with total prizemoney of \$5,000 or more (this direction is contingent upon facility availability).</li> <li>• Random Ballot system applies (1 in 8 chance).</li> <li>• All other swabbing at direction of stewards based on performance.</li> </ul>

Source: GRNSW, Submission 382 to the Select Committee dated 6 November 2013, pp. 39-40

20.44 When giving evidence to the Select Committee in 2014, Mr Hogan said that GRNSW's budget increase to \$1.2 million in FY13 year meant that:

[I]n practice at every race at Wentworth Park, our main metropolitan centre, at least the winner was tested. It means that, on average, at our TAB meetings we will take 7.5 swabs. Our swabbing policy lines up with what is considered to be best practice around the country. It is intelligence-based swabbing, where the stewards who are controlling the meeting have access to the database

<sup>44</sup> GRNSW website, "Category of Drugs": <[https://www.thedogs.com.au/Uploads/Userfiles/GRNSWCategoryOfSubstances\(1\).pdf](https://www.thedogs.com.au/Uploads/Userfiles/GRNSWCategoryOfSubstances(1).pdf)> (accessed 30 May 2016).

<sup>45</sup> GRNSW, Submission 382 to the Select Committee dated 6 November 2013, p. 40; article "Dogs Ramp Up Drug Detection" by GRNSW, 14 August 2009, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=611>> (accessed 8 June 2016).

in relation to the swabs taken previously and they know the performance of the greyhounds. They can make intelligent decisions about which greyhounds should be swabbed.<sup>46</sup>

20.45 The NSW Greyhound Breeders, Owners and Trainer’s Association (“GBOTA”) publishes information for various tracks (Wentworth Park, Bathurst, Bulli, Gosford, Lismore, Maitland, Appin Way, Gunnedah and Temora) and states whether those tracks follow the GRNSW swabbing procedures. The GBOTA page for Bathurst Track, for example, states:

Bathurst follow[s] GRNSW swabbing procedures and withholds prize money greater than \$6000 when swabs are undertaken. Prize money is paid following clearance of swab.<sup>47</sup>

20.46 By comparison, the page for Gunnedah Track states that, while the withholding of prize money may occur, it is entirely discretionary:

Gunnedah follow GRNSW swabbing procedures and may withhold prize money (usually if above \$6000) at their full and unconditional discretion when swabs are undertaken. When this occurs, prize money is paid following clearance of swab sample.<sup>48</sup>

### In-competition testing

20.47 In accordance with R 79, GRNSW stewards are empowered to collect swabs from greyhounds that have:

- a) been entered for, or competed in, an event, including a satisfactory trial, or
- b) been presented for a test or examination for the purpose of ascertaining the greyhound’s fitness to take part in an event, or for removing or varying any period of penalty issued pursuant to the Rules.

This is known as “in-competition testing”.

### Out-of-competition testing

20.48 In addition to in-competition testing, GRNSW stewards can collect swabs from greyhounds out-of-competition, to test for permanently banned prohibited substances in accordance with R 79A and R 80 (“out-of-competition testing”).

20.49 Rule 79A was introduced on 1 January 2011. It was substantially amended in January 2014.

20.50 Stewards are empowered to carry out, or cause to be carried out, such tests as they deem necessary in relation to a greyhound at any time for the purposes of R 79A.<sup>49</sup> If an out-of-competition sample is taken and found to contain a permanently banned prohibited substance, the greyhound must be withdrawn from any event in which it has been nominated to complete and will not be eligible for any future event until a sample is taken that does not breach the out-of-competition testing rule.<sup>50</sup>

20.51 In addition, the trainer or any other person who was in charge of the greyhound at the relevant time shall be guilty of an offence, the greyhound will be disqualified from events or trials for

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<sup>46</sup> Brent Hogan, Select Committee Public Forum Transcript 15 November 2013: T5.

<sup>47</sup> NSW GBOTA, “Track Information: Bathurst”: <<http://www.gbota.com.au/track-information/bathurst>> (accessed 30 May 2016).

<sup>48</sup> NSW GBOTA, “Track Information: Gunnedah”: <<http://www.gbota.com.au/track-information/gunnedah>> (accessed 30 May 2016).

<sup>49</sup> The Rules R 79A(1).

<sup>50</sup> The Rules R 79A(3).

which it was nominated at the time the sample was taken, and the greyhound may be disqualified from any events in which it competed subsequent to the positive sample.<sup>51</sup>

- 20.52 Substances deemed to be permanently banned prohibited substances are set out in R 79A(2). Under R 79A(5), GRNSW may add to the list of permanently banned prohibited substances and communicate such additions to registered persons in a suitable manner.
- 20.53 There are a number of substances which are exempted from the provisions of R 79A(2) when administered in accordance with the relevant State and Commonwealth legislation by a veterinarian for pain relief, sedation or anaesthesia (for example, methadone and morphine).<sup>52</sup>
- 20.54 If a permanently banned substance is found at any time at premises used in relation to the training or racing of greyhounds, any registered person who owns, trains or races or is in charge of greyhounds at those premises is deemed to have the substance in their possession and shall be guilty of an offence.<sup>53</sup>
- 20.55 As at 8 June 2016, GRNSW had not detected any permanently banned prohibited substances in greyhounds tested out-of-competition.<sup>54</sup>

### Procedures for testing

- 20.56 Pursuant to R 80, stewards can request or instruct a veterinary surgeon to take a sample for the purposes of testing a greyhound pursuant to R 79(1). The veterinary surgeon is entitled to take samples of “excreta, urine, blood, saliva or other body substance” pursuant to any established procedures for the collection of samples. Under R 80(2), stewards or other “authorised person[s]” are equally authorised to take samples from greyhounds, again pursuant to any established procedures for the collection of samples.
- 20.57 As at mid-2015, many swab officials who collected samples for testing were not GRNSW employees.<sup>55</sup> In a report dated 19 July 2015 and prepared for GRNSW by Mr David Madden, a former deputy police commissioner (“the Madden Report”), Mr Madden said that the swab official who accompanies the owner/trainer during the same collection is (typically) not a GRNSW employee. Mr Madden described this aspect as “the weakest point of the process”. Mr Madden further said:

At the various tracks, persons appointed by the club officials as swab officials and attendants, are overseen, where possible, by stewards and veterinarians, if present.

An examination of some CCTV footage shows that this does not always occur and whilst it is clear that a swab official will remove a dog from the race kennel for the purposes of obtaining urine, they are not always under the observation of an independent GRNSW representative.<sup>56</sup>

- 20.58 Mr Madden recommended that only GRNSW employees be permitted to undertake swabbing roles including collection of samples for testing, and that GRNSW should consider employing

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<sup>51</sup> The Rules R 79A(4).

<sup>52</sup> The Rules R 79A(6).

<sup>53</sup> The Rules R 79A(7).

<sup>54</sup> GRNSW, Response to Order 25 dated 22 December 2015, p. 15; correspondence dated 8 June 2016 from GRNSW to the NSW Crown Solicitor.

<sup>55</sup> David Madden, report, “Comments on Drug Testing Arrangements Associated with the NSW Greyhound racing Industry” (August 2015) (“the Madden Report”), p. 13; GRNSW Response to Order 6 dated 11 August 2015. The Madden Report was also annexed to GRNSW’s submission to the Commission dated 24 August 2015.

<sup>56</sup> Ibid.

casual staff to perform such functions at racetracks rather than allowing clubs to nominate a person to perform the role.<sup>57</sup>

20.59 A GRNSW briefing paper dated 20 October 2015 prepared for the current interim Chief Executive of GRNSW noted that the recommendation of the Madden Report – that GRNSW employ casual staff to undertake swabbing functions – was supported in principle.<sup>58</sup> The briefing paper also noted that GRNSW did directly employ some casual swabbing officials (paid \$40 per hour) at Wentworth Park meetings and at other “feature meetings.”<sup>59</sup>

20.60 Rule 80(3) prescribes the procedures for dealing with samples taken from greyhounds, including the sealing, identification and delivery of samples to an accredited laboratory. Rule 1 defines “accredited laboratory” as meaning a laboratory approved by the Controlling Body to perform tests on a biological sample taken from or produced by a greyhound. GRNSW has approved the following laboratories under the Rules:

- a) Australian Racing Forensic Laboratory, Randwick, NSW;
- b) Racing Analytical Services Ltd, Melbourne;
- c) Queensland Government Racing Service Centre, Brisbane;
- d) Racing Chemistry Laboratory, Chemistry Centre, Perth; and
- e) National Measurement Institute – North Ryde, NSW.<sup>60</sup>

20.61 Previously, GRNSW has used Australian Racing Forensics Laboratory (“ARFL”) for its forensic testing services.<sup>61</sup> In a document which appears to have been published around the time of the *Four Corners program* in February 2015, GRNSW responded to questions posed by the ABC and, specifically, the question “What measures have you as the regulator taken to ensure that greyhound racing has integrity?” as follows:

Supplementing GRNSW’s best practice swabbing policy is the forensic analysis procedures conducted at the Australian Racing Forensics Laboratory (ARFL), which is owned and operated by Racing NSW. The ARFL’s methodology for drug testing is accredited by the National Association of Testing Authorities and internationally recognised for its expertise in drug detection in both horse racing and greyhound racing.<sup>62</sup>

20.62 In July 2015, GRNSW issued a request for tender to accredited forensic testing organisations to ensure that its provider could “deliver a scalable service which can accommodate increased testing and ensure economy.”<sup>63</sup> Following the procurement process, in March 2016, GRNSW announced that it had awarded the tender for the provision of its forensic testing services to RASL.<sup>64</sup>

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<sup>57</sup> Madden Report, p. 8.

<sup>58</sup> Internal GRNSW document “Chief Executive Brief – Review of the Comments on Drug Testing Arrangements Associated with the NSW Greyhound Racing Industry” (2015) (contact: Karen Lees): GRNSW Response to Order 25 dated 22 December 2015.

<sup>59</sup> *Ibid*, [13].

<sup>60</sup> The Rules R 1 (definition of “accredited laboratory”).

<sup>61</sup> GRNSW Submission 769 to the Commission dated 24 August 2015, [399].

<sup>62</sup> ABC website, document “Questions for GRNSW” (undated but c. February 2015), p. 1: <[http://www.abc.net.au/reslib/201502/r1389470\\_19745651.pdf](http://www.abc.net.au/reslib/201502/r1389470_19745651.pdf)> (accessed 31 May 2016).

<sup>63</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [399]-[404].

<sup>64</sup> Article “GRNSW Awards Forensic Testing Tender” by GRNSW, 30 March 2016, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7496>> (accessed 30 May 2016).

## Prevalence of doping in the industry

- 20.63 Reports vary about the extent of doping in the greyhound racing industry. In 2013, veteran greyhound trainer Christos Arletos reportedly told the ABC's 7:30 program that: "80 per cent of greyhound trainers [were] looking for something to dope their dogs."<sup>65</sup> A year earlier, an article in *The Sydney Morning Herald* claimed that the use of illegal substances in greyhound racing had "exploded", citing GRNSW's own figures which reportedly showed an increase in more than 80% in positive drug swabs from FY 21 to FY 12.<sup>66</sup>
- 20.64 While doping is clearly a recurring problem, and one that requires continued vigilance by any regulator, there is an absence of concrete data to support the notion that doping is endemic in the industry or that anything like 80% of trainers were or are looking to dope their dogs.
- 20.65 In its First Report dated March 2014, the Select Committee noted that a number of witnesses had suggested there were high levels of prohibited substance use in the industry. The Select Committee noted, however, that: "much of this evidence was not verified and could be considered to be hearsay."<sup>67</sup>
- 20.66 The Commission received numerous submissions claiming that drug use in the industry is common. One person said that drug use was "a huge problem" in the industry that had been overlooked by the "current [live baiting] hysteria".<sup>68</sup> The Animal Justice Party noted that there had been "repeated evidence" of illegal substance use and noted that, in addition to being a welfare concern for the greyhounds and rendering races unfair, possession of such drugs is an offence under relevant legislation.<sup>69</sup>
- 20.67 On 22 December 2015, in response to an Order issued by the Commission, GRNSW provided figures for the number of swabs that it collected for both in-competition and out-of-competition between financial years 2010 and 2016 (as at the time of the Order). Figures were also provided for the number of positive results detected from those swabs.

**Table 20.6 Swabs collected by GRNSW and percentage of positives: FY10 to FY16**

Year	In-competition	Positive (in-comp)	Out-of-competition	Positive (out-of-comp)	Total % of positives
2009-10	3,393	32	n/s	0	0.94%
2010-11	3,318	26	80	0	0.77%
2011-12	3,783	48	60 <sup>70</sup>	0	1.27%
2012-13	5,477	35	85	0	0.62%
2013-14	5,648	53	71	0	0.93%
2014-15	5,766	51	7	0	0.88%
1 Jul–22 Dec '15 <sup>71</sup>	2,842	17	19	0	0.59%

Source: GRNSW Response to Order 25 dated 22 December 2015, pp. 2-3, 15

<sup>65</sup> Report "Doping, Cruelty and Collusion Claims Dogs Greyhound Racing Industry" by Sean Rubinzstein-Dunlop and Lesley Robinson, 15 October 2013, ABC 7:30 Report: <<http://www.abc.net.au/7.30/content/2013/s3869813.htm>>.

<sup>66</sup> Article "Going to the dogs – bikies, dopers and fraudsters" by Natalie O'Brien, 12 August 2012, *The Sydney Morning Herald*: <<http://www.smh.com.au/nsw/going-to-the-dogs--bikies-dopers-and-fraudsters-20120811-2418m.html>> (accessed 30 May 2016).

<sup>67</sup> Select Committee First Report, p. 80.

<sup>68</sup> Stella Mackinnon, Submission 12 to the Commission dated 23 May 2015.

<sup>69</sup> Animal Justice Party, Submission 19 to the Commission dated 2 June 2015, p. 5.

<sup>70</sup> In response to Order 25 issued by the Commission, GRNSW stated that 60 swabs collected out-of-competition in FY12 in addition to 3,783 in-competition swabs; GRNSW Response to Order 25 dated 22 December 2015, p. 15. However, these 60 swabs do not appear to have been accounted for in the GRNSW Annual Report 2012, which records the total number of swabs as 3,783 (rather than 3,843 swabs) for that reporting period.

<sup>71</sup> Figures for FY16 are as provided by GRNSW on 22 December 2016.

- 20.68 GRNSW also publishes figures in its Annual Reports for the total amount of swabs collected and positive results – but does not distinguish between in-competition and out-of-competition swabs.
- 20.69 In its First Report, the Select Committee published data that compared drug testing between the three racing codes in NSW in FY13.<sup>72</sup> The data is reproduced in the table below. It reveals that, in the relevant period, the percentage of positive swabs in greyhound racing was markedly higher than in the other two codes – nearly six times higher than in the thoroughbred racing industry and nearly three times higher than in the harness racing industry. In addition, in the relevant period, the percentage of starters that were tested in greyhound racing, was very much lower than in the other two codes.

**Table 20.7 Comparison of drug testing between the three racing codes in NSW: FY13**

Code	Samples tested	Percentage of starters tested	Declared positives	% of positive swabs
Greyhounds	5,562	5.5%	19	0.62%
Harness Racing	8,181	22.7%	19	0.23%
Thoroughbreds	15,561	28.7%	18	0.11%

Source: Select Committee First Report, p. 77

- 20.70 GRNSW publishes the results of negative swabs each month on a section of its website entitled “Swab Clearances”.<sup>73</sup> As at May 2016, the results of cleared swabs could be viewed by month up to March 2016. For each month, a table can be viewed on this web page which lists the swabs cleared in that month. It includes details of the race meet, the date the swab was cleared, and the name of the club, greyhound and trainer.<sup>74</sup>

## Enforcement of penalties

- 20.71 As noted, stewards use the GRNSW drug classification system and the GRNSW Penalty Table to determine what penalty should be imposed when a prohibited substance is detected.
- 20.72 When certain drugs (Category 5, Category 4 and some Category 3) are detected, the trainer has the option of entering an early guilty plea and receiving a 25% discount on the standard penalty set out in the GRNSW Penalty Table.<sup>75</sup> If the early guilty plea option is not taken, the matter proceeds to a stewards’ inquiry and the right to the 25% discount is lost. When more serious drugs (Category 1, Category 2 and some Category 3) are detected, the matter proceeds straight to a stewards’ inquiry.
- 20.73 GRNSW introduced the current penalty system in 2012, after receiving Board approval in September that year. GRNSW states that the system was a first for greyhound racing in Australia, likening it to the systems used by the National Rugby League and the Australian Football League.<sup>76</sup>

<sup>72</sup> Select Committee First Report, p. 77.

<sup>73</sup> GRNSW website, “Swab Clearances”: <<http://www.thedogs.com.au/Racing/Integrity/SwabClearances.aspx>> (accessed 31 May 2016).

<sup>74</sup> See, for example, the GRNSW table of “Negative Swabs for February 2016”: <<http://www.thedogs.com.au/Uploads/Cleared%20Swabs%20February%202016.pdf>> (accessed 31 May 2016).

<sup>75</sup> GRNSW website, GRNSW Penalty Table”: <[http://www.thedogs.com.au/Uploads/Userfiles/GRNSWPenaltyTable\(1\).pdf](http://www.thedogs.com.au/Uploads/Userfiles/GRNSWPenaltyTable(1).pdf)> (accessed 30 May 2016).

<sup>76</sup> Article “GRNSW Releases Penalty Guidelines” by GRNSW, 10 October 2012, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=3303>> (accessed 30 May 2016).

20.74 The two key changes that the new system brought about were: first, the introduction of the penalty guidelines in the GRNSW Penalty Table; and second, the option to enter an early guilty plea for certain offences. Upon its introduction, Mr Hogan stated:

The new system to deal with prohibited substance cases is part of GRNSW's commitment to ensuring the integrity of greyhound racing and emanates from a review of our drug detection strategies that has included a doubling of our swabbing budget... The introduction of penalty guidelines and an early plea will increase transparency for greyhound racing participants while also improving the efficiency of the inquiry process for prohibited substances... GRNSW Stewards will still retain a degree of discretion to ensure that particular circumstances of each case are taken into account.<sup>77</sup>

20.75 Despite offering a starting point for penalties (expressed in number of weeks), the Penalty Table does not state whether these weeks are in relation to a suspension or disqualification. Further, the table does not specify when and in what amount fines should be issued.

20.76 The Rules contain definitions for “disqualification”, “penalty” and “suspension” but do not offer specific guidance on which penalty should be applied and in what circumstances.

**Table 20.8 GRNSW definitions for disqualification, penalty and suspension**

Penalty term	Definition in the Rules
"disqualification"	in relation to a person or greyhound means disqualified by a Controlling Body or Stewards or pursuant to the Rules of any approved controlling authority or thoroughbred, harness or greyhound racing club.
"penalty"	means a fine, disqualification, suspension, warning off, cancellation of registration, declaration of defaulter, order of prohibition and any other determination, decision, order or other matter imposed or made pursuant to these Rules by which a person or a greyhound suffers or incurs a disadvantage, detriment or any restriction whatsoever.
"suspension"	in relation to any person, means the withdrawal for any period of any registration, licence, right or privilege granted pursuant to these Rules. in relation to a greyhound means the withdrawal for any period of any specified or all rights relevant to its registration.

Source: GRNSW Rules of Racing, R 1

20.77 In terms of penalties generally, R 95(1) provides that:

A person found guilty of an offence pursuant to or a breach of these Rules shall, at the discretion of the Controlling Body or the Stewards be liable to any 1 or combination of a -

- (a) fine not exceeding such amount as specified in the relevant Act or Rules for any one (1) offence;
- (b) suspension;
- (c) disqualification;
- (d) cancellation of registration; or
- (e) warning off

as the Controlling Body or Stewards see fit.

20.78 Rule 96 deals with fines and provides:

Unless the Controlling Body determines otherwise, a fine imposed shall be paid to the Controlling Body within 14 days of the date upon which the person is notified of the penalty, or in the event of an appeal when the fine is upheld, either in whole or in part, within 14 days of the date when the fine is upheld.

<sup>77</sup> Ibid.

20.79 Rule 97 deals with cumulative penalties and provides:

If a person or a greyhound-

- (a) is disqualified or suspended on any occasion for more than 1 period; or
- (b) has been previously disqualified or suspended for any period and during that period is again disqualified or suspended,

any period of disqualification or suspension other than the first or any further period of disqualification or suspension is, if the Controlling Body or the Stewards so directs, to be cumulative.

20.80 While there are similarities between suspension and disqualification, disqualification constitutes a harsher penalty. Under R 99(2) the effects of a suspension – at least while it is in place – and a disqualification are the same:

A person who is disqualified, warned off, suspended or declared to be a defaulter shall not, during the period of the penalty-

- (a) nominate a greyhound for any Event;
- (b) permit a greyhound of which that person is the owner or the trainer to compete in any Event;
- (c) act as an attendant at a meeting;
- (d) train a greyhound;
- (e) participate in a breeding program;
- (f) act as an official at a meeting;
- (g) be engaged as an employee or agent by any other person in the training of greyhounds; or
- (h) be a member of any committee of a club which is registered pursuant to the Rules of a Controlling Body.

20.81 However, a disqualification carries the following additional restrictions:

Unless the Controlling Body in special circumstances otherwise directs, a person who has been disqualified, warned off or declared as a defaulter is not-

- (a) entitled to retain any registration certificates or greyhound identification cards held by the person and the person shall immediately deliver to the Controlling Body all registration certificates or greyhound identification cards issued to the person;
- (b) permitted to transact any business affecting the registration of persons or greyhounds with the Controlling Body;
- (c) to enter any enclosure or other portion of a racecourse or any lands occupied or used in connection with a racecourse during any Event, whether acting as agent or otherwise;
- (d) to enter the premises of a club on a day when a meeting, qualifying trial, satisfactory trial, other trial, Event or greyhound training of any type is occurring or would reasonably be expected to occur regardless of whether the meeting, qualifying trial, satisfactory trial, other trial, Event or training is actually occurring at that time;
- (e) to have any of the rights or privileges conferred by any registration pursuant to these Rules;
- (f) eligible to otherwise participate in or associate with greyhound racing and any greyhound which has been nominated by the person or in the person's name, or of which the person is wholly or partly the owner or which is proved to the satisfaction of

the Controlling Body to be pursuant to the person's care, custody or training, is prohibited from competing in any Event; and

- (g) to enter or go or remain on, at any time, any place where greyhounds are trained, kept or raced.

### Factors taken into account during inquiries

20.82 As noted, stewards must have regard to the matters specified in R 92(4), namely:

- a) the character and antecedents of the person charged;
- b) the nature of the breach and the circumstances in which it was committed, in particular, the seriousness of the breach and any negligence, recklessness or indifference of the person charged; and
- c) whether the person has denied or admitted the charge.

20.83 In addition, the GRNSW Penalty Table provides stewards with a non-exhaustive list of aggravating and mitigating factors, which can be summarised as follows:

**Table 20.9 Prohibited substance inquiries: aggravating and mitigating factors**

Aggravating factors	Mitigating factors
The original penalty will be increased for trainers with prior offences.	The penalty may be decreased if a trainer enters an early guilty plea and accepts the penalty issued by the Stewards.
The original penalty may be increased owing to other factors including, but not limited to, high level detection, suspicious betting activity, proof of administration and careless husbandry practices.	A reduction in penalty may also be applied if a low level of the prohibited substance is detected.
	Personal and other case specific circumstances may also allow for a reduction in the penalty.

Source: GRNSW website, "GRNSW Penalty Table"

20.84 Stewards are thus able to take into account a wide range of factors when determining drug-related inquiries. On occasions, this has led to criticism from participants regarding alleged inconsistencies in penalties.

20.85 The Select Committee noted that, despite the fact that GRNSW has published guidelines on penalty, some participants argued that greater consistency in the determination of penalties is required.<sup>78</sup> Dr Ted Humphries said in evidence that:

The penalties are very variable. There is a great deal of latitude given to the stewards who hear the inquiry and I think they do not always exercise that prerogative in a straightforward ... fashion.<sup>79</sup>

20.86 On the question of penalties, the Select Committee concluded as follows:

To ensure transparency and demonstrate consistency in applying penalties, GRNSW should consider referring specifically to the relevant penalty tables, and how they apply to a particular case, when publishing the outcomes of hearings.<sup>80</sup>

<sup>78</sup> Select Committee First Report, p. 78.

<sup>79</sup> Dr Ted Humphries, Select Committee Public Forum 15 November 2013: T73.

<sup>80</sup> Select Committee First Report, p. 80.

## Accidental administration

20.87 An explanation commonly put forward in prohibited substance inquiries is accidental administration. As noted above, this explanation does not absolve a person of his or her responsibility to present a greyhound for racing free of any prohibited substance. In June 2014, GRNSW's former General Manager of Integrity, Mr Bill Fanning, reportedly said:

The prohibited substance rules are absolute offences in the sense that the mere presence in a greyhound constitutes an offence, no matter how that substance entered into a greyhound's system. GRNSW encourages trainers to take measures to ensure their greyhounds are not exposed to prohibited substances.<sup>81</sup>

20.88 GRNSW offers a non-raceday testing service of samples. It is designed to help trainers to determine a greyhound's suitability for competitive racing following veterinary treatment using long-acting therapeutic drugs. The service appears to be limited to testing for anabolic steroids, corticosteroids and procaine.<sup>82</sup> There are strict guidelines for the collection and delivery of non-raceday samples and arrangements for testing must be made through stewards. Importantly, a negative result from a non-raceday test does not absolve a trainer from responsibility if the greyhound subsequently returns a positive swab at a race meet.<sup>83</sup>

## Withholding periods and substance warnings

20.89 A number of submissions to the Select Committee referred to a lack of awareness among participants about withholding periods (ie. the amount of time for which a greyhound should be held back from racing following administration of therapeutic drugs through veterinary treatment). In its First Report, the Select Committee recommended that GRNSW publish information about therapeutic substances that are permitted for treating greyhounds, including their withholding periods.<sup>84</sup>

## Reviews of GRNSW drug testing regime

### Gorrie Report

20.90 On 12 August 2012, GRNSW asked the Integrity Auditor, Mr Graham Gorrie, to review all swabs taken in the preceding 12 months, in order to address allegations raised in the media of missing swabs and preferential treatment.<sup>85</sup> Mr Gorrie provided a report dated 22 August 2012 ("the Gorrie Report").

20.91 As detailed in his report, Mr Gorrie found that, during the period of review, there was no evidence that swabs had gone missing or were delayed in transit from a race meeting to GRNSW, or from GRNSW to the ARFL. All swabs had been recorded and tracked. He also found that there was no evidence to support the allegation that swabs were taking a long time to analyse, or that stewards were giving preferential treatment to certain trainers. Mr Gorrie's review was limited by the short turnaround required. Given the constraints imposed, he was

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<sup>81</sup> Article "Accidental Administration Of Prohibited Substances Won't Work As A Defence" by Damien Osborne, 25 June 2014, *Australian Racing Greyhound*: <<http://www.australianracinggreyhound.com/australian-greyhound-racing/greyhound-racing-regulations/accidental-administration-of-prohibited-substances-wont-work-as-a-defence/52133>> (accessed 30 May 2016).

<sup>82</sup> GRNSW website, "Non-Race Day Urine Collection Guidelines": <<http://www.thedogs.com.au/DPage.aspx?spid=137&id=75>> (accessed 31 May 2016).

<sup>83</sup> GRNSW website, "Guidelines for the Collection and Delivery of Non-Raceday Samples": <<http://www.thedogs.com.au/Uploads/Userfiles/Non-Raceday%20Samples%20Issue%20Forms.pdf>> (accessed 31 May 2016).

<sup>84</sup> Select Committee First Report, pp. 79-80.

<sup>85</sup> Article "Going to the dogs – bikies, dopers and fraudsters" by Natalie O'Brien, 12 August 2012, *The Sydney Morning Herald*: <<http://www.smh.com.au/nsw/going-to-the-dogs--bikies-dopers-and-fraudsters-20120811-2418m.html>> (accessed 30 May 2016).

“unable to confirm whether any swab sample or sample test kit had been contaminated or tampered with by a Racing Official during the last twelve months.”<sup>86</sup>

- 20.92 The Gorrie Report is discussed further in Chapter 31 dealing with the office of the Integrity Auditor.

### Select Committee First Report

- 20.93 In its First Report, the Select Committee noted that a number of industry participants had criticised GRNSW’s swabbing process for being subject to interference by stewards and for not acting as a strong deterrent to trainers. The Select Committee cited Dr Ted Humphries, who submitted that collections are not witnessed and that “swabs were ‘on occasion sealed and reopened and resealed with never the slightest suggestion of tampering being raised.’” Dr Humphries also expressed concern about the level of discretion the system affords stewards.<sup>87</sup>
- 20.94 The Select Committee noted information that GRNSW provided to the effect that at least two people are present during the swabbing process – the swabbing official and the trainer of the greyhound being swabbed – and that the process is in part captured on CCTV.<sup>88</sup>
- 20.95 The Select Committee also noted that a number of industry participants called for a return to a random “red marble” (or similar) system for drug testing. GRNSW denied the suggestion that the red marble system acted as a better deterrent than its new policy. GRNSW submitted that the effectiveness of the red marble was “questionable” because at metropolitan races there was an 80% chance of winners not being selected (rising to 87.5% for other meetings).<sup>89</sup>
- 20.96 The Select Committee recommended that GRNSW should increase the number of drug swabs collected and allocate a proportion of drug swabs to a random sample of starters.<sup>90</sup>
- 20.97 As noted, the Commission received submissions which claimed that prohibited substance use was common in the industry and/or which were critical of the GRNSW’s drug testing regime.<sup>91</sup> A former steward for the GRNSW’s predecessor, the Greyhound Racing Authority, was critical of GRNSW’s drug testing protocols and procedures. He contended that the system can lead to unfair outcomes. He said:

... it is time for accepted levels to be set for some therapeutic and treatment drugs. The present system catches many honest participants with no previous convictions over long periods of time whose greyhounds return 1-2 nanograms ... of a treatment drug with no performance enhancement.<sup>92</sup>

### Madden Report

- 20.98 As noted, in mid-2015 Mr Madden conducted a review of GRNSW’s drug testing arrangements. The Madden Report identified that there was a weakness in GRNSW’s drug testing system at the “sample collection point”. The report also noted that, for the system to have integrity, samples must be collected from people who have no conflicts of interest and who are supervised.<sup>93</sup> On this latter point, Mr Madden noted:

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<sup>86</sup> Report “Review of Swabbing Procedures” (August 2012) p. 3: GRNSW Response to Order 2 dated 15 June 2015.

<sup>87</sup> Select Committee First Report, p. 74.

<sup>88</sup> Ibid, p. 76.

<sup>89</sup> Ibid, p. 75.

<sup>90</sup> Ibid, p. 81.

<sup>91</sup> See for example, [No name] Submission 30 to the Commission dated 25 June 2015.

<sup>92</sup> David Kiernan, Submission 15 to the Commission dated 2 June 2015, p. 6.

<sup>93</sup> Madden Report, p. 3.

Currently, the sample is collected by officials identified by the Racing Club under the supervision of GRNSW employees.

However, these GRNSW employees can become distracted by other tasks and it means that the sample is potentially collected by a club nominated official, potentially with a conflict of interest and out of sight of the GRNSW staff member but with the owner/trainer present.<sup>94</sup>

20.99 In his report, Mr Madden was supportive of GRNSW's policy to target particular dogs to be swabbed based on performance, rather than having a random process. Mr Madden described the system, which is based on centralised stewarding from the control room, as follows:

It is an effective system aimed at reducing the potential for misconduct or corruption of the system.

The centralised steward utilises documentation and computer records to identify dogs which have performed poorly in the past and then suddenly performed extremely well or even the situation where a dog that is performing well suddenly performed poorly.<sup>95</sup>

20.100 Mr Madden concluded that GRNSW should retain the existing system of centralised stewarding and non-random, discretionary swabbing.<sup>96</sup> He recommended, however, that a random swabbing regime should be introduced to complement the current system.<sup>97</sup>

20.101 In October 2015, GRNSW's General Manager of Compliance reviewed the findings and recommendations of the Madden Report.

20.102 As noted, the GRNSW Compliance Unit supported, at least in principle, Mr Madden's recommendations in relation to the appointment of swabbing officials.

## Recommendations

53. All clubs should follow the Greyhound Racing NSW swabbing procedures and must withhold prize money of, or above, the sum of \$6,000 until the result of the swab is known.
54. A random swabbing regime should be introduced to complement Greyhound Racing NSW's existing swabbing policy.
55. Stewards should refer specifically to the relevant penalty tables, and how they apply to a particular case, when publishing the outcomes of prohibited substance hearings.

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid, p. 27.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid, p. 8.

# 21 Veterinary and scientific use of greyhounds

## Introduction

- 21.1 Each year in NSW, thousands of greyhounds that are considered unsuitable for racing are euthanased, whether humanely or otherwise. They form part of what the industry euphemistically refers to as ‘wastage’, a matter discussed in Chapters 11 to 16 of this Report. Some of these greyhounds that are, in effect, marked for death find their way into clinics and laboratories, where the veterinary and medical sciences have found a final use for them in connection with their euthanasing.
- 21.2 Sectors of the veterinary and medical sciences consider both the blood and anatomy of greyhounds to be valuable commodities for research and medical purposes. Most greyhound blood is of a “universal” type that, to a large extent, can be received by other dogs during medical procedures without causing transfusion reactions in the recipient.<sup>98</sup> Greyhounds also have a naturally high red blood cell count.<sup>99</sup>
- 21.3 Such greyhounds are also used for other medical research, including training would-be surgeons in severe trauma courses.<sup>100</sup> In addition, ex-racing greyhounds are considered ideal specimens for veterinary education, including as cadavers, because of their size, good physical health and lean physique.<sup>101</sup>
- 21.4 Greyhounds comprise a significant proportion of the number of dogs used for such veterinary and scientific purposes, as referred to above. This is a reflection of the many thousands of dogs who, each year, comprise the wastage of the industry. In submissions to the NSW Legislative Council’s 2014 Select Committee on Greyhound Racing in NSW (“the Select Committee”), one university student said:

As a vet student I believe it is my obligation to inform you of the realities of the current state of greyhound racing.

...

It is easy to forget the reality of the greyhound who did not compete this racing season.

...

For me, walking into an anatomy lesson and seeing hundreds of donated cadavers (you’d be hard pressed to find a non-greyhound) literally piling up is a very real and constant reminder. To the

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<sup>98</sup> Program “Bled dry - the fate of greyhound racing’s ‘wastage’” by Sean Rubinsztein-Dunlop and Lesley Robinson, 7 November 2013, ABC 7.30: <<http://www.abc.net.au/7.30/content/2013/s3886470.htm>> (accessed 31 May 2016).

<sup>99</sup> Dr Shannon West (Animal Referral Hospital), cited in article “Re-homed greyhounds set to provide much-needed blood supply for Canberra pets in emergency” by Kimberly Le Lievre, 21 February 2016, *The Canberra Times*: <<http://www.canberratimes.com.au/act-news/rehomed-greyhounds-set-to-provide-muchneeded-blood-supply-for-canberra-pets-in-emergency-20150219-13j5j6.html>> (accessed 31 May 2016).

<sup>100</sup> Article “Royal Australasian College of Surgeons under fire over live animal labs” by Julia Medew, 14 April 2016, *The Age*: <<http://www.theage.com.au/victoria/royal-australasian-college-of-surgeons-under-fire-over-live-animal-labs-20160413-go5az6.html>> (accessed 31 May 2016).

<sup>101</sup> Siaw-Yean Woon, “A Veterinary Student’s Perspective on Educational Animal Use and the Potential for Humane Alternatives”, paper presented at the 8<sup>th</sup> *World Congress on Alternatives and Animal Use in the Life Sciences*, Montreal, Canada (21-25 August 2011), pp. 377-395; see also Catherine Tiplady, Shan Lloyd and John Morton, “Veterinary Science Student Preferences for the Source of Dog Cadavers Used in Anatomy Teaching” (2011) 39(5) *Alternatives to Laboratory Animals* 461.

university's credit, all cadavers are legally obtained and nothing is done wrong. But the fact there is a surplus of 'donated' dogs is very sad.<sup>102</sup>

## Greyhound blood used in veterinary practice

21.5 The Commission's investigations revealed that it is not uncommon, especially in some larger veterinary clinics and referral centres, for unwanted greyhounds to be drained of their blood under anaesthetic before being euthanased. Greyhound blood is said to be desirable because of its universality. Using the blood of ex-racing greyhounds in this fashion is also said to be cheaper than buying blood from a blood bank.<sup>103</sup>

21.6 Exposure to the 'bleeding' of greyhounds, whether on a routine basis or otherwise, can, however, have traumatic effects on veterinary nurses.<sup>104</sup>

21.7 In evidence before the Commission, Dr Jade Norris, Scientific Officer at RSPCA Australia, said she was aware of the practice of collecting blood from greyhounds that were shortly to be euthanased. Dr Norris gave evidence to the effect that such dogs may spend longer in a clinic prior to being sedated than dogs that were simply to be euthanased without being involved in the blood collection process, and that this can increase the stress experienced (prior to death) by the dog. Dr Norris said:

They have their blood taken and then they're euthanased afterwards. Typically I understand that they're sedated for the procedure, and then they're euthanased afterwards. In terms of welfare concerns ... being in a vet clinic for a certain amount of time can be stressful to animals, also the act of taking the blood prolongs the procedure.<sup>105</sup>

21.8 The Commission also received written submissions expressing concerns about the use of greyhounds, excess to the industry's requirements, for the purpose of being drained of their blood before being euthanased.<sup>106</sup> RSPCA Australia raised concerns about the "ethical and welfare problems associated with non-recoverable blood collection" from greyhounds and said that addressing the issue required addressing the issues of overbreeding and wastage, to reduce the number of greyhounds being presented for euthanasia.<sup>107</sup>

21.9 The Select Committee similarly received submissions relating to the use of ex-racing greyhounds as blood 'donors'. Some persons voiced disapproval over the practice and called for it to be banned.<sup>108</sup> Others called for statistics on the number of greyhounds sent to universities, research centres, drug companies and veterinarians for their blood to be made public.<sup>109</sup> Friends of the Hound Inc. noted that:

Masses of Greyhounds end up in Vet Clinics ... where they are utilised as blood donors before being euthanized, again the justification being that they are wastage anyway...<sup>110</sup>

21.10 In contrast to the disapproving sentiments raised in such submissions received by the Commission and the Select Committee, some persons adopted what might be regarded as a

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<sup>102</sup> Name Suppressed, Submission 735 to the Select Committee dated 5 November 2013.

<sup>103</sup> Program "Bled dry - the fate of greyhound racing's 'wastage'" by Sean Rubinsztein-Dunlop and Lesley Robinson, 7 November 2013, ABC 7.30: <<http://www.abc.net.au/7.30/content/2013/s3886470.htm>> (accessed 31 May 2016).

<sup>104</sup> Ibid; see also article "Destruction of greyhounds distresses vet students" by Natalie O'Brien, 2 February 2014, *The Sydney Morning Herald*: <<http://www.smh.com.au/environment/animals/destruction-of-greyhounds-distresses-vet-students-20140201-31tv.html>> (accessed 31 May 2016).

<sup>105</sup> 19 November 2015: T673.3-8.

<sup>106</sup> See, for example, Elizabeth Wright, Submission 158 to the Commission dated 4 July 2015.

<sup>107</sup> Ex RR (17-19 November 2015), p. 9.

<sup>108</sup> Name Suppressed, Submission 517 to the Select Committee dated 6 November 2013.

<sup>109</sup> Colin Lindsell, Submission 499 to the Select Committee dated 6 November 2013, p. 3.

<sup>110</sup> Friends of the Hound Inc., Submission 362 to the Select Committee dated 5 November 2013, p. 6.

more pragmatic approach. They contended that there is nothing wrong with the practice of using ex-racing greyhounds as blood ‘donors’ when they are about to be euthanased. Dr Robert Zammit, who was a member of GRNSW’s former Veterinary Advisory Panel, told the Select Committee in November 2013 that the concern over taking blood from greyhounds was “getting a little bit out of hand”. In Dr Zammit’s view, the greyhounds suffer no pain or loss of dignity in the process, which works as follows:

These dogs are about to be euthanised anyway. They are anaesthetised, blood is taken, and then the anaesthetic process continues to euthanasia. They are not harmed in any way.<sup>111</sup>

- 21.11 Dr Zammit said that, by extracting a greyhound’s blood, its death becomes meaningful, as “that blood can save the life of another dog.” He gave examples of how a greyhound’s blood can be used to save other canines’ lives – such as when a dog has been in a car accident or is having a tumour surgically removed.<sup>112</sup> In Dr Zammit’s view, “at least that dog’s death means something to other dogs.”<sup>113</sup>

## Greyhounds used in scientific research and education

- 21.12 Australian university veterinary faculties use many live and dead ex-racing greyhounds, excess to industry requirements, for research and teaching purposes.<sup>114</sup> Indeed, it is said that the use of live animals and cadavers is “common” in schools that teach “veterinary anatomy, pathology, surgery, anaesthesia and clinical procedures to students.”<sup>115</sup>
- 21.13 The Commission received submissions raising concerns over the use of ex-racing greyhounds for research and teaching purposes. The Select Committee received submissions to similar effect.<sup>116</sup> In submissions to the Commission, a number of persons called for a ban on the use of ex-racing greyhounds in research laboratories and veterinary schools.<sup>117</sup> Others, such as RSPCA Australia, emphasised that the causes for the surplus of homeless greyhounds – ie. overbreeding and wastage – needed to be addressed.<sup>118</sup> It also called for the Government to make available to the public information on the use of greyhounds in research and education.<sup>119</sup>
- 21.14 Friends of the Hound Inc. contended that greyhounds are wanted by research and education institutions because of their “favoured anatomy for veterinary science study and training [which makes] them an ideal choice for laboratories and classrooms.”<sup>120</sup> Sentient, the Veterinary Institute for Animal Ethics, noted that the use of greyhound cadavers for anatomy dissection

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<sup>111</sup> Dr Robert Zammit, Select Committee Public Forum 15 November 2013: T78.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid, T79. See also program “Bled dry - the fate of greyhound racing's 'wastage'” by Sean Rubinsztein-Dunlop and Lesley Robinson, 7 November 2013, ABC 7.30: <<http://www.abc.net.au/7.30/content/2013/s3886470.htm>> (accessed 31 May 2016) (quoting the director of a veterinary service as stating “it’s ethical because these are dogs that would be euthanased and they can help other patients”).

<sup>114</sup> Catherine Tiplady, Shan Lloyd and John Morton, “Veterinary Science Student Preferences for the Source of Dog Cadavers Used in Anatomy Teaching” (2011) 39(5) *Alternatives to Laboratory Animals* 461; article “Royal Australasian College of Surgeons under fire over live animal labs” by Julia Medew, 14 April 2016, *The Age*: <<http://www.theage.com.au/victoria/royal-australasian-college-of-surgeons-under-fire-over-live-animal-labs-20160413-go5az6.html>> (accessed 31 May 2016).

<sup>115</sup> Catherine Tiplady, Shan Lloyd and John Morton, “Veterinary Science Student Preferences for the Source of Dog Cadavers Used in Anatomy Teaching” (2011) 39(5) *Alternatives to Laboratory Animals* 461.

<sup>116</sup> Name Suppressed, Submission 517 to the Select Committee dated 6 November 2013; Lawyers for Companion Animals, Submission 531 to the Select Committee dated 7 November 2013, p. 19; Humane Society International Inc., Submission 180 to the Select Committee dated 21 October 2013, p. 3.

<sup>117</sup> Humane Society International Inc., Submission 105 to the Commission dated 1 July 2015, p. 7.

<sup>118</sup> Exhibit RR (17-19 November 2015) p. 9.

<sup>119</sup> Greyhound Freedom, Submission 530 to the Select Committee dated 12 November 2013, p. 31.

<sup>120</sup> Friends of the Hound Inc., Submission 362 to the Select Committee dated 5 November 2013, p. 6.

occurs “because owners are able to have healthy dogs (who are not winners) euthanased in return for their carcasses.”<sup>121</sup>

- 21.15 The Commission is aware of instances of live greyhounds having been used in scientific research and training in Australia – for example, in “terminal practical classes”, where students practise procedures on living, anaesthetised animals before they are euthanased.<sup>122</sup>
- 21.16 The use of greyhounds at Australian universities for research and teaching purposes has reportedly caused distress to some students.<sup>123</sup> This phenomenon has been noted in academic literature.<sup>124</sup>
- 21.17 At least as at 2004 and 2005, the Royal Australasian College of Surgeons (“RACS”) at its laboratory in Fitzroy, Victoria reportedly used live greyhounds (believed to be ex-racing dogs) as part of a course in the early management of severe trauma, which trainee surgeons found to be a distressing experience. It was reported that, during this course, trainee surgeons would “cut holes in a dog’s throat, chest, abdomen and leg to insert tubes for air, fluid drainage or drug infusion.” The RACS says that the only live animals it now uses for these courses are sheep and pigs, in accordance with the relevant Australian guidelines.<sup>125</sup>
- 21.18 In 2015, the University of Melbourne’s dental school reportedly used ex-racing greyhounds, which a NSW breeder supplied, for use in surgical experiments in which live dogs were given dental implants under general anaesthetic and then kept alive for a period of time before being euthanased by lethal injection.<sup>126</sup>

## Using the “by-products of wastage”

- 21.19 Questions arise as to whether it is legal and/or ethical to use the blood of ex-racing greyhounds for veterinary purposes, and the cadavers of deceased greyhounds for scientific research and education. In the context of greyhounds that are surplus to the racing industry’s needs, this, in effect, amounts to using a ‘by-product of wastage’. If it were not for the greyhound racing industry, the supply of homeless greyhounds on such a scale would not exist.

## Legal considerations

- 21.20 There is complex legal regulation, authorisation requirements and obligations governing the use of animals in research.

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<sup>121</sup> Sentient, the Veterinary Institute for Animal Ethics, Submission 798 to the Commission dated 5 February 2016.

<sup>122</sup> Dr Catherine Tiplady, “Animal Use in Veterinary Education – The Need for a Fourth R: Respect” (2012) 40(5) *Alternatives to Laboratory Animals* 5; see also Catherine Tiplady, Shan Lloyd and John Morton, “Veterinary Science Student Preferences for the Source of Dog Cadavers Used in Anatomy Teaching” (2011) 39(5) *Alternatives to Laboratory Animals* 461.

<sup>123</sup> Article “Victoria lab experiments kill 100 dogs for drug and dental research” by Marika Dobbin, 5 December 2015, *The Age*: <<http://www.theage.com.au/victoria/victoria-lab-experiments-kill-100-dogs-for-drug-and-dental-research-20151204-glg0g1.html>> (accessed 31 May 2016); article “Destruction of greyhounds distresses vet students” by Natalie O’Brien, 2 February 2014, *Sydney Morning Herald*: <<http://www.smh.com.au/environment/animals/destruction-of-greyhounds-distresses-vet-students-20140201-31tv.html>> (accessed 31 May 2016).

<sup>124</sup> Dr Catherine Tiplady, “Animal Use in Veterinary Education – The Need for a Fourth R: Respect” (2012) 40(5) *Alternatives to Laboratory Animals* 5; see also Siaw-Yean Woon, “A Veterinary Student’s Perspective on Educational Animal Use and the Potential for Humane Alternatives”, paper presented at the 8<sup>th</sup> *World Congress on Alternatives and Animal Use in the Life Sciences*, Montreal, Canada (21-25 August 2011), pp. 377-395; and Catherine Tiplady, Shan Lloyd and John Morton, “Veterinary Science Student Preferences for the Source of Dog Cadavers Used in Anatomy Teaching” (2011) 39(5) *Alternatives to Laboratory Animals* 461.

<sup>125</sup> Article “Royal Australasian College of Surgeons under fire over live animal labs” by Julia Medew, 14 April 2016, *The Age*: <<http://www.theage.com.au/victoria/royal-australasian-college-of-surgeons-under-fire-over-live-animal-labs-20160413-go5az6.html>> (accessed 31 May 2016).

<sup>126</sup> Article “Victoria lab experiments kill 100 dogs for drug and dental research” by Marika Dobbin, 5 December 2015, *The Age*: <<http://www.theage.com.au/victoria/victoria-lab-experiments-kill-100-dogs-for-drug-and-dental-research-20151204-glg0g1.html>> (accessed 31 May 2016). A university spokesman reportedly stated that veterinarians monitored the dogs throughout the process.

21.21 In NSW, the *Animal Research Act 1985* (NSW) (“the ARA”) and *Animal Research Regulations 2010* (NSW) (“the ARR”) govern the use of animals in connection with animal research. The object of the ARA is:

(1) ... to protect the welfare of animals used in connection with research by requiring persons or organisations carrying out animal research or supplying animals for research to be authorised under this Act and by regulating the carrying out of animal research and the supply of animals for research by those persons or organisations.

(2) Authorisations under this Act may be granted only for recognised research purposes. Recognised research purposes include purposes involving the use of animals for research, teaching, testing and the production of biological products.<sup>127</sup>

21.22 Section 48 of the ARA contains offence provisions for the unlawful supply of animals for use in connection with animal research. It reads:

**Unlawfully supplying animals for use in connection with animal research**

(1) A person shall not supply animals (other than exempt animals) for use in connection with animal research unless the person is the holder of an animal supplier’s licence.

*Maximum penalty: 160 penalty units in the case of a corporation and 30 penalty units or imprisonment for 12 months, or both, in the case of an individual.*

(2) The holder of an animal supplier’s licence shall not supply animals for use in connection with animal research otherwise than as authorised by the licence.

*Maximum penalty: 160 penalty units in the case of a corporation and 30 penalty units or imprisonment for 12 months, or both, in the case of an individual.*

(3) In proceedings for an offence against this section, it is to be presumed, in the absence of evidence to the contrary adduced by the person charged with the offence, that a person who obtained, bred, nurtured or kept animals (other than exempt animals) did so for the purpose of their being supplied for use in connection with animal research if it is proved that the person was receiving or was about to receive any fee or reward for the supply of animals for use in connection with animal research.

21.23 Division 5 of Part 4 of the ARA deals with animal suppliers’ licences. The applicant for a licence must have a duly constituted animal care and ethics committee.<sup>128</sup> The licence application process involves a Panel (a Department of Primary Industries and Animal Research Review Panel) examining the application and providing a report to the Secretary of the Department of Primary Industries. The Secretary considers the report before determining whether to grant or refuse the application.

21.24 Section 48 uses the expression “exempt animals”. Under s. 3(1) of the ARA, greyhounds fall within the definition of “animal”.<sup>129</sup> Section 3(1) defines “exempt animals” as meaning:

(a) any animal (including any animal that is in the wild) that belongs to the class of animals comprising cattle, horses, sheep, goats, pigs and poultry or that belongs to any other class of animals prescribed for the purposes of this paragraph, or

(b) any other animal (including any native animal and any exotic animal) that is in the wild.

21.25 Clause 19 of the ARR prescribes additional categories of exempt animals, but states that this is in relation only to a procedure, test, experiment, inquiry, investigation or study referred to in Schedule 3 in relation to such an animal.

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<sup>127</sup> ARA s. 2A

<sup>128</sup> ARA s. 39(2).

<sup>129</sup> Section 3(1) defines “animal” as meaning “vertebrate animal, and includes a mammal, bird, reptile, amphibian and fish, but does not include a human being.”

21.26 Two categories of “exempt animals”, as prescribed, into which ex-racing greyhounds may fall are “unowned animals” and “privately-owned animals”. These are defined in Schedule 3, paragraphs 2 and 3, of the ARR as follows:

#### **2 Unowned animals**

Animals that are not owned by any person are exempt animals for the purposes of any procedure, test, experiment, inquiry, investigation or study to be carried out by an authorised researcher if the relevant ethics committee is satisfied that:

(a) the procedure, test, experiment, inquiry, investigation or study:

- (i) is innocuous and non-invasive, and
- (ii) will not have foreseeable lasting adverse consequences for the animal, and

(b) appropriate arrangements exist for long-term welfare of the animal after the procedure, test, experiment, inquiry, investigation or study has been completed.

#### **Privately-owned animals**

Privately-owned animals are exempt animals for the purposes of any procedure, test, experiment, inquiry, investigation or study to be carried out by an authorised researcher if the relevant ethics committee is satisfied that:

(a) the procedure, test, experiment, inquiry, investigation or study:

- (i) is innocuous and non-invasive, and
- (ii) will not have foreseeable lasting adverse consequences for the animal, and

(b) the animal will remain under the effective control of its owner while the procedure, test, experiment, inquiry, investigation or study is being carried out.

21.27 Clause 17 of the ARR provides that a person may, without contravening s. 48 of the ARA, supply dogs or cats to a holder of an animal supply licence, provided the person supplying the dogs or cats complies with conditions in Part 3 of Schedule 1 of the ARR.<sup>130</sup> The conditions, relevantly, are:

(1) A person may supply to a licensed animal supplier, and a licensed animal supplier may accept from any person, any animal for use in connection with animal research, but only if the animal is accompanied by a document that contains the following particulars:

- (a) the species, breed or type, sex, approximate estimated age, and colour of the animal,
- (b) details of any identification on the animal at the time of supply,
- (c) proof of identification (including full name and address) of the person supplying the animal,
- (d) a declaration signed and dated by the person supplying the animal, which states:

I am the owner/authorised agent of the owner of the animal described above, and I give my approval to it being supplied alive for use in research conducted in accordance with the *Animal Research Act 1985* which governs the conditions under which animal research may be conducted.

(2) Despite subclause (1), an impounding authority may not supply to a licensed animal supplier, and a licensed animal supplier may not accept from an impounding authority, any animal for use in connection with animal research.

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<sup>130</sup> ARR Sch. 1, Pt. 3.

(3) Subclause (2) applies not only to supply effected directly but also to supply effected indirectly by means of an agent or intermediary.

(4) In this clause:

**impounding authority** means:

(a) an impounding authority within the meaning of the *Impounding Act 1993*, or

(b) a pound operator within the meaning of the *Companion Animals Act 1998*.<sup>131</sup>

21.28 Thus, under the ARA and the ARR, private individuals may supply dogs and cats to be used live in animal research, as long as they provide the requisite details and complete the requisite declaration as set out above. However, impounding facilities expressly cannot supply dogs and cats for animal research.

21.29 The ARA and the ARR are silent on the use of animal carcasses or cadavers in connection with animal research, and on the euthanasing of dogs so that their carcasses or cadavers can be used for research.

### ***Australian Code of Practice regarding animal research***

21.30 Section 4(1) of the ARA provides that “the regulations may prescribe a Code of Practice with respect to the conduct of animal research and the supply of animals for use in connection with animal research.” The “Australian Code for the Care and Use of Animals for Scientific Purposes” (8th ed. 2013), published by the Australian Government,<sup>132</sup> together with the supplementary provisions in Schedule 1 of the ARR, constitute the prescribed Code of Practice for the purposes of s. 4 of the ARA.

21.31 The first of the “Governing principles” of the Code of Practice are:

1.1 Respect for animals must underpin all decisions and actions involving the care and use of animals for scientific purposes. This respect is demonstrated by:

(i) using animals only when it is justified

(ii) supporting the wellbeing of the animals involved

(iii) avoiding or minimising harm, including pain and distress, to those animals

(iv) applying high standards of scientific integrity

(v) applying Replacement, Reduction and Refinement (the 3Rs) at all stages of animal care and use:

(a) the *Replacement* of animals with other methods

(b) the *Reduction* in the number of animals used

(c) the *Refinement* of techniques used to minimise the adverse impact on animals

(vi) knowing and accepting one’s responsibilities.

1.2 The care and use of animals for scientific purposes must be subject to ethical review.

1.3 A judgement as to whether a proposed use of animals is ethically acceptable must be based on information that demonstrates the principles in Clause 1.1, and must balance whether the potential effects on the wellbeing of the animals involved is justified by the potential benefits.

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<sup>131</sup> ARR Sch. 1, Pt. 3.

<sup>132</sup> National Health and Medical Research Council, “Australian code for the care and use of animals for scientific purposes” (Canberra: National Health and Medical Research Council, 8th ed., 2013).

- 1.4 The obligation to respect animals, and the responsibilities associated with this obligation, apply throughout the animal's lifetime, including acquisition, transport, breeding, housing, husbandry, use of the animal in a project, and provisions for the animal at the conclusion of their use.

21.32 The Code of Practice expands upon each of the above principles.

21.33 In connection with animals suffering pain or distress, the Code of Practice states:

- 1.10 Animals have a capacity to experience pain and distress, even though they may perceive and respond to circumstances differently from humans. Pain and distress may be difficult to evaluate in animals. Unless there is evidence to the contrary, it must be assumed that procedures and conditions that would cause pain and distress in humans cause pain and distress in animals. Decisions regarding the possible impact of procedures or conditions on an animal's wellbeing must be made in consideration of an animal's capacity to experience pain and distress.
- 1.11 Steps must be taken at all times to safeguard the wellbeing of animals by avoiding or minimising harm, including pain and distress to the animals.
- 1.12 Where the aim(s) of the project involves the animals experiencing pain and distress that will not be alleviated, the planned endpoint of the project must be as early as feasible to avoid or minimise pain and distress in the animals.
- 1.13 'Death as an endpoint' must be avoided unless it is essential for the aim(s) of the project. In these circumstances, the means to prevent or minimise harm, including pain and distress, must be considered, implemented and reviewed at all stages of the project.
- 1.14 Prompt action must be taken to alleviate pain and distress that were not anticipated in an approved project or activity, or occur as the result of an emergency. Such action must take precedence over an individual animal reaching the planned endpoint of the project or activity, or the continuation or completion of the project or activity

21.34 Similar to the ARA and the ARR, the Code of Practice contains no direct guidelines on the use of carcasses or cadavers in connection with animal research.

## Ethical considerations

21.35 Ethical considerations arise in connection with the use of live and dead ex-racing greyhounds in veterinary practice, and in scientific research and education. Such greyhounds may be used in a manner that involves harm, suffering and distress to the animal. Further, as the Commission is aware, the broader question of using live animals for veterinary purposes, and killing healthy animals for scientific research and education purposes, attracts divergent and strongly held views.

21.36 Conceivably, greyhounds, like other animals, can be used for veterinary and scientific purposes in a manner that involves no undue harm or suffering to the animals involved. For example, in terms of blood collection, conceptually at least, canine blood could be sourced via blood banks that operate on the basis of owner consent and which do not involve the euthanasing of the donor dog. In such a scenario, blood is collected from healthy animals to a safe level, in a similar manner to how human blood banks operate. Some people would consider this to be a more ethical means of sourcing canine blood for use in medical contexts than the practice of extracting every drop of blood from a soon-to-be euthanased greyhound which has been discarded by the racing industry.

21.37 RSPCA Australia, in its submission to the Commission, called for alternative blood supply chains (that do not involve euthanasia) to be "urgently expanded" and suggested the following approach:

... recoverable blood collection from suitable, healthy owned 'donor' pet dogs (including pet greyhounds) under close supervision and at appropriate intervals to ensure the welfare of the dogs.<sup>133</sup>

- 21.38 This approach seemingly does, in fact, already operate with success in some clinics. The Animal Referral Hospital ("the ARH"), which has branches in NSW and the ACT, states that it is not necessary for greyhounds to "bleed to death" in order to keep blood stocks high. While acknowledging that access to blood is "vital" for sick animals in need of transfusions, the ARH states that it does not source blood from greyhounds that are to be euthanased. Rather, it operates a program whereby, if the necessary blood product is not available from a blood bank from donor dogs, staff and "client animals" are on-call to donate blood in emergency situations. A veterinary surgeon from the ARH said:

Pets donating blood is just like donating blood at the human blood bank, and donor animals are all right to leave not long after donating.<sup>134</sup>

- 21.39 Animal donors at the ARH also reportedly receive free health checks to ensure their suitability, and can safely donate up to three or four times a year.<sup>135</sup>
- 21.40 In February 2015, the Canberra branch of the ARH reported that approximately 25 owners of rehomed "family" greyhounds had signed up for its blood donor program. A veterinarian from the ARH in Canberra reportedly said that, "greyhounds [make] great blood donor dogs because of their calm temperament, unwillingness to bite when scared and naturally high red blood cell count."<sup>136</sup>

#### **Tasmanian policy development**

- 21.41 In Tasmania, the Greyhound Racing Policy Manual published by Tasracing ("the Tasracing Policy") contains a section which addresses "Veterinary Practice, Scientific Research and Education". The Tasracing Policy states that greyhounds in the Tasmanian Greyhounds As Pets ("GAP") Program are not to be used for blood donations and their carcasses are not to be used for scientific or educational purposes.
- 21.42 The Tasracing Policy does, however, recognise the right of individual dog owners – once the dog has been adopted – to consent to these practices should they so wish. The Tasracing Policy states:

- 2.1. No greyhound entered into a greyhound adoption program managed by Tasracing shall be used for any blood donation or the collection of any blood or tissue samples and the carcass of any such greyhound shall not be used for any scientific purpose whatsoever.
- 2.2. Tasracing recognises that blood donations do form an important part of veterinary practice where veterinarians use that blood in saving other canines and respects the rights of an owner of any breed of dog to consent for their pet to donate blood, however approval for this processes is appropriately the responsibility of individual owners.
- 2.3. Tasracing also recognises that the collection of blood or tissue samples and the donation of a terminal dog or the use of a carcass for scientific and/or educational purposes does form an important part of research and education and respects the

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<sup>133</sup> Ex RR (17-19 November 2015), p. 9.

<sup>134</sup> Media release "Veterinarians Urge Pet Owners to Support Animal Blood Donor Programs" by Animal Referral Hospital, *Animal Referral Hospital website*: <<http://www.arhvets.com/news/32-veterinarians-urge-pet-owners-to-support-animal-blood-donor-programs>> (accessed 31 May 2016).

<sup>135</sup> *Ibid.*

<sup>136</sup> Article "Re-homed greyhounds set to provide much-needed blood supply for Canberra pets in emergency" by Kimberly Le Lievre, 21 February 2016, *The Canberra Times*: <<http://www.canberratimes.com.au/act-news/rehomed-greyhounds-set-to-provide-muchneeded-blood-supply-for-canberra-pets-in-emergency-20150219-13j5j6.html>> (accessed 31 May 2016).

rights of an owner of any breed of dog to consent for their pet to be used in such manner, however approval for this process is appropriately the responsibility of individual owners.<sup>137</sup>

- 21.43 GRNSW appears not to have released any comparable policy document relevant to NSW. At a Federal level, however, Greyhounds Australasia (“GA”) has reportedly indicated that GAP dogs should not be used for blood donations. GA’s Chief Executive, Scott Parker, is quoted as saying, “GAP is the official adoption program of the state greyhound racing controlling authorities. It is not a manager of blood donations.”<sup>138</sup>

#### ***Ethically sourced cadavers***

- 21.44 Ethical considerations arise in relation to the use of the cadavers of ex-racing greyhounds for scientific research and education, particularly where they have been euthanased because they are excess stock that cannot be rehomed. Such cadavers would not be, within the relevant discourse, ‘ethically sourced’. They can be contrasted with the cadaver of a dog that had died from natural causes.

- 21.45 Following a pilot survey conducted on Sydney University veterinary students in 2011, the author of a paper presented to the “8<sup>th</sup> World Congress on Alternatives and Animal Use in the Life Sciences” noted that the cadavers of ex-racing greyhounds were routinely used in veterinary teaching by the University of Sydney, Faculty of Veterinary Science; animal cadavers were also sourced from council pounds and slaughterhouses. The paper noted that, while the sources of these cadavers existed independently of the University, this did not mean that the cadavers were “ethically sourced”. The author, Siaw-Yean Woon, wrote:

As of 2011 the use of animal cadavers in dissection practicals has remained a central component of our veterinary anatomy course. The greyhound racing industry, which euthanizes thousands of healthy greyhounds deemed unprofitable or no longer profitable, serves as the predominant source of cadavers. Animal shelters (including local council “pounds”) provide cadavers of dogs routinely euthanized due to overpopulation or an inability to be rehomed, and abattoir specimens are obtained as excess from slaughterhouses. While all of these sources exist independently of our usage, ethical concerns arise due to their origin as by-products of practices that are not conducive to animal welfare (Martinsen and Jukes, 2007). It is important to note that they are not categorized as ethically sourced cadavers, since this definition implies that the animals have died due to medical reasons, in an accident, or from natural causes (Knight, 1999).<sup>139</sup>

- 21.46 The term “ethically sourced” in this context means cadavers and tissue obtained from animals that have “died naturally or in accidents, or who have been euthanised secondary to natural terminal disease or non-recoverable injury.” As a result:

Animals that have been captured, bought, bred, kept, harmed or killed to provide cadavers and tissue are not considered ethically sourced.<sup>140</sup>

Healthy ex-racing greyhounds that find their way to labs because they have not been rehomed do not, therefore, meet this definition of ethically sourced.

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<sup>137</sup> Tasracing, “GPOL0068 – Veterinary Practice, Scientific Research and Education” (effective 1 February 2016), [2.1]-[2.3].

<sup>138</sup> Australian Veterinary Association website, “GAP greyhounds and blood donations”: <<http://www.ava.com.au/13468>> (accessed 31 May 2016).

<sup>139</sup> Siaw-Yean Woon, “A Veterinary Student’s Perspective on Educational Animal Use and the Potential for Humane Alternatives”, paper presented at the 8<sup>th</sup> World Congress on Alternatives and Animal Use in the Life Sciences, Montreal, Canada (21-25 August 2011), pp. 377-378; see also Dr Catherine Tiplady, “Animal Use in Veterinary Education – The Need for a Fourth R: Respect” (2012) 40(5) *Alternatives to Laboratory Animals* 5.

<sup>140</sup> The authors cited the “InterNICHE ‘Policy on the Use of Animals and Alternatives in Education’”: Siri Martinsen and Nick Jukes, “Ethically sourced animal cadavers and tissue: Considerations for education and training”, paper presented at the 6<sup>th</sup> World Congress on Alternatives and Animal Use in the Life Sciences, Tokyo, Japan (21-25 August 2007), p. 265.

- 21.47 One proposal for addressing the ethical issues arising from unethically sourced cadavers is to adopt a ‘cadaver donation program’ whereby donated specimens arrive with medical histories. This type of program has been implemented, apparently with success, in veterinary institutions in the United States of America (in one instance, a donation program replaced the practice of killing retired greyhounds as a source of cadavers).<sup>141</sup>

## Findings

- 21.48 Thousands of greyhounds are euthanased in NSW each year because they are considered unsuitable for racing. Some of these greyhounds are – while in a sedated state – drained of their blood before being euthanased. This practice raises ethical considerations. It is a matter of profound concern to some people, while others regard it as a pragmatic means of obtaining much needed supplies of blood.
- 21.49 Greyhounds that are excess to industry requirements in NSW are also used for scientific research and education purposes. This too raises ethical considerations about which there can be vigorous debate. The debate extends to the uses of both live and dead greyhounds, including whether a greyhound cadaver is ethically sourced or not.
- 21.50 The Commission accepts that different views can be held about whether the use of greyhounds for blood collection and veterinary and scientific research is justifiable. Profound ethical considerations arise. In most cases, these issues do not admit of a ready answer. The Commission does find, however, that the use of ex-racing greyhounds for such purposes should not be regarded as ethically justifiable simply on the basis that the greyhounds are surplus to the industry’s needs and destined to be killed anyway. Such an approach would fail to have proper regard to the root cause by which so many greyhounds end up being used for veterinary and scientific purposes, and that is the problem of industry wastage. The issues concerning wastage are dealt with in Chapters 11 to 16 of this Report.

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<sup>141</sup> Siaw-Yean Woon, “A Veterinary Student’s Perspective on Educational Animal Use and the Potential for Humane Alternatives”, paper presented at the 8<sup>th</sup> *World Congress on Alternatives and Animal Use in the Life Sciences*, Montreal, Canada (21-25 August 2011), p. 382; and Siri Martinsen and Nick Jukes, “Ethically sourced animal cadavers and tissue: Considerations for education and training”, paper presented at the 6<sup>th</sup> *World Congress on Alternatives and Animal Use in the Life Sciences*, Tokyo, Japan (21-25 August 2007), p. 266.



## 22 Kennel inspections and trial tracks

### Introduction

- 22.1 Kennel inspections are an essential tool for the protection of the welfare of greyhounds. If properly implemented, a process whereby inspections are undertaken of the properties of greyhound industry participants, which is both rigorous and relatively frequent, provides an important means of helping to ensure monitoring and compliance with animal welfare standards, including as incorporated in applicable Greyhound Racing New South Wales (“GRNSW”) codes of practice. Such inspections should be random, unannounced and relatively frequent.
- 22.2 As will be seen, however, there have been significant deficiencies in GRNSW’s inspection processes, at least up until February 2015 when the *Four Corners program* was broadcast. The extent of inspections being undertaken was inadequate. This is relevant not only directly to the welfare of greyhounds but also to the barbaric practice of live baiting, which was considered in Chapter 3. The relative infrequency of inspections is likely to have helped foster an attitude by persons involved in live baiting that they were highly unlikely to be caught.
- 22.3 In addition, as will be seen, until about late 2015, GRNSW failed to report publicly on the extent of its kennel (and trial track) inspections. From its establishment in 2009 until its Annual Report 2015, GRNSW failed to provide annual reporting of the number of kennel inspections undertaken. This represents an unsatisfactory lack of transparency on the part of GRNSW.

### Purpose of inspections of participant premises

- 22.4 The purpose of undertaking inspections of the premises of industry participants is to assess the suitability of the premises – typically, a training facility – with regard to animal welfare, occupational health and safety, and security compliance. In practice, animal welfare considerations should be at the forefront of any inspection process.

### Power of GRNSW to undertake inspections

#### The Act

- 22.5 The *Greyhound Racing Act 2009* (“the Act”) does not refer, in specific terms, to the inspection of kennels by GRNSW. Using words of broad import, s. 9(2) of the Act provides that the functions of GRNSW include: “to control, supervise and regulate greyhound racing in the State”. Section 10(2)(b) provides that GRNSW has power to “supervise the activities of greyhound racing clubs, persons registered by GRNSW and all other persons engaged in or associated with greyhound racing”.
- 22.6 Section 23(1) confers on GRNSW a broad power to make rules with respect to the control and regulation of greyhound racing. This includes rules with respect to the keeping of greyhounds

that are in the care or custody of persons registered under the Act,<sup>142</sup> and the breeding of greyhounds.<sup>143</sup>

## The Rules – inspection of premises

22.7 The GRNSW Greyhound Racing Rules (“the Rules”)<sup>144</sup> confer explicit powers on GRNSW officers to enter, search and inspect premises.<sup>145</sup> “Premises” are defined to include

[L]and, buildings or any fixed or moveable structure, including any vehicle ... if they are otherwise under the control of any licensed person and used in any manner in relation to any licence.<sup>146</sup>

22.8 Relevantly for present purposes, pursuant to R 18(2), an officer of GRNSW may at any time enter upon land or premises owned, occupied or under the control of a licensed person:

- (a) to inspect and search the premises and any article or thing situated thereon,
- (b) to take possession of, remove and retain any article or thing found as the result of such search,
- (c) to inspect, examine and test any greyhound which the officer believes is registered with GRNSW,
- (d) to inspect any track, racing equipment, kennelling or security arrangements,
- (e) to inspect stocks of medication, preparations, chemicals, instruments, applicators, syringes and other items or substances capable of use in the preparation, training or racing of greyhounds,
- (f) to inspect, take extracts from, copy, download or print any documents or records relevant to greyhound racing of any greyhound, and
- (g) for any purpose which may reasonably assist in determining whether an offence is being or has been committed, or whether any condition of any licence, registration or permission granted by GRNSW has been or is being breached.

22.9 Rule 18(3) sets out obligations on the person subject to the inspection. Among other things, he or she must permit the GRNSW officer to remain on the land for so long as the officer reasonably requires, and must produce, supply or make available such greyhounds, samples, documents or information as may be required. Rule 18(4) sets out further items of which a GRNSW officer may take possession at the premises and retain for specified purposes.

22.10 Local Rule 18(1) supplements the powers under R 18 to provide that a GRNSW officer may enter upon the premises to “secure against interference anything that cannot be conveniently removed from the premises.” Local Rule 18(2) provides that such entry upon premises by the GRNSW officer does not amount to a trespass and no action for damages or other relief shall lie against that person or GRNSW.

## Inspection of litters

22.11 Rule 137(2) provides that a litter the subject of an application for registration “must be inspected, marked, ear branded and microchipped by a marking, microchipping and ear

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<sup>142</sup> The Act s. 23(2)(f).

<sup>143</sup> The Act s. 23(2)(g).

<sup>144</sup> The Rules were recently consolidated, with amendments, as at 14 April 2016.

<sup>145</sup> The Rules R 18, LR 18.

<sup>146</sup> The Rules R 18(1).

branding official before an application for registration of the litter can be made”, unless GRNSW has granted an exemption.<sup>147</sup> Rule 136(2) further contemplates that pups may be inspected.

- 22.12 For completeness, mention should also be made of provisions relating to the inspection of trial tracks and racing facilities.

### Inspection of trial tracks

- 22.13 As further described below, pursuant to LR 150P, an officer of GRNSW (including a steward) may, subject to production of proof of identity if demanded, "at all reasonable times enter and inspect any registered trial track and anything connected to the track (not being a dwelling-house)". The GRNSW official may also require any registered person to furnish such information as the official considers reasonably necessary for the purpose of administering the Rules.

### Inspection of racing facilities

- 22.14 Pursuant to R 26, stewards are required to inspect racing facilities at a greyhound race track meeting, prior to the commencement of kennelling for the meeting and as often thereafter as may be necessary. In accordance with R 26(1), the steward must inspect kennel buildings, track surfaces, fixtures and fittings; and racing equipment.

### Participant acknowledgment of GRNSW right to inspect premises

- 22.15 In addition to the above provisions of the Act and the Rules, the application form for a Trainer, Owner-Trainer or Attendant Licence,<sup>148</sup> issued by GRNSW and to be completed by the applicant, includes an undertaking or acknowledgment by the applicant as follows:

... As a condition of the granting of my application for this licence /registration to be issued/renewed, I agree at all times to observe and be bound by the Greyhound Racing Act 2009 and the Rules of Greyhound Racing, all applicable rules and laws in force from time to time during the currency of this licence/registration and all decisions and directions by GRNSW that it is empowered to make or give.<sup>149</sup>

- 22.16 This, in effect, provides an implicit acknowledgment, by the licensed participant, of GRNSW's right to inspect the participant's premises in accordance with the Rules.
- 22.17 Greyhound owners applying for registration with GRNSW must also provide the same acknowledgment.<sup>150</sup> The application form for a Breeder's Licence with GRNSW provides for the making of the same acknowledgement by the applicant. In addition, the form states: "Please note that a successful inspection is a condition of a Breeders licence in NSW in accordance with the Code of Practice for Breeding, Rearing and Education".<sup>151</sup>

## Policy development by GRNSW: kennel inspections

- 22.18 Since about 2010 to date, GRNSW has sought to develop a coherent policy regarding kennel inspections. The policy, as first revised and implemented from about July 2011, set out the

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<sup>147</sup> See also R 111 providing for the appointment, by GRNSW, of marking, micro-chipping and ear branding officials.

<sup>148</sup> All presently use by the same GRNSW form.

<sup>149</sup> See, for example, GRNSW Licence Application Form (Attendant/Owner-Trainer/Trainer):

<<http://www.grnsw.com.au/uploads/160307%20Form%20-%20Licence%20Application%20Form.pdf>> (accessed 27 May 2016).

<sup>150</sup> GRNSW Licence Application Form (Owner): <[http://www.thedogs.com.au/Uploads/Userfiles/131101%20Form%20-%20Owner%20Application\(1\).pdf](http://www.thedogs.com.au/Uploads/Userfiles/131101%20Form%20-%20Owner%20Application(1).pdf)> (accessed 25 May 2016).

<sup>151</sup> GRNSW Breeder Licence Application Form: <<http://www.grnsw.com.au/uploads/150617%20Form%20-%20NSW%20Breeder%20Licence%20Application%20Form.pdf>> (accessed 25 May 2016).

amount and frequency of kennel inspections to be undertaken. As will be seen, GRNSW failed to achieve the number of inspections required under its policy.

- 22.19 The evolving nature of GRNSW's kennel inspections policy is evidenced by various documents and information that the Commission obtained using its compulsory powers.
- 22.20 In 2010, a paper prepared by management went to the Board of GRNSW recommending that the Board consider adopting a new policy and set of procedures for kennel inspections. The paper noted a concern that, in the past, the kennel inspection process had been "haphazard", and that Victoria was considered to be a leader in the area. The paper noted that, "[t]here are a number of licensed persons who have never had a kennel inspection or not had an inspection of their premises conducted for some period of time." The paper further noted that kennel inspections were the responsibility of GRNSW stewards but that there were no guidelines or reporting standards to facilitate the inspection process, and no targets for the number of inspections undertaken. Rather, stewards could "self determine" schedules for routine kennel inspections and, the paper noted, "[m]anagement suspects some Stewards are not operating at full capacity..."<sup>152</sup>
- 22.21 The 2010 board paper recommended that minimum standards for the maintenance and operation of greyhound kennels, to be incorporated into a code of practice, be developed, as part of the "Project Welfare" initiatives, and which could be utilised in respect of the kennel inspections process.<sup>153</sup>
- 22.22 The paper recommended that the Board adopt a policy for kennel inspections under which, from 1 July 2011, GRNSW would conduct kennel inspections for all licensed persons once every two years. The policy would, as such, require approximately 1,500 kennel inspections per year. This was said to be a significant increase on current numbers.<sup>154</sup>
- 22.23 The Board considered the paper at its meeting on in June 2010.<sup>155</sup> The Board adopted the new policy position on kennel inspections stated to be: "From 1 July 2011 GRNSW aspires to conduct kennel inspections for all licensed persons once every 2 years."<sup>156</sup> The relevant record does not record precisely why the policy was not intended to become effective until some 12 months after the Board's resolution.<sup>157</sup> A "Project Plan" dated July 2010 stated:
- The majority of the Board were extremely supportive of the proposal, however, noted that the new policy should be used to provide assistance, guidance and education to participants in the first instance, not punishment. This issue needs to be reinforced as part of the training for the Stewards on the new kennel inspection policy to ensure a consistent approach across NSW.<sup>158</sup>
- 22.24 In April 2011, GRNSW issued the first version of its Code of Practice for the Keeping of Greyhounds in Training ("the GRNSW Training Code").<sup>159</sup> The GRNSW Training Code contained provisions relating to matters such as kennel construction, kennel size, hygiene and security. Potentially at least, the GRNSW Training Code was a reference point to be utilised by a GRNSW officer when undertaking kennel inspections.
- 22.25 In May 2013, GRNSW appointed a joint investigator with HRNSW. The position was said to be responsible for welfare investigations. However, the position ceased to exist in October 2014.

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<sup>152</sup> GRNSW Response to Order 1 dated 1 May 2015 (Folder 18 – Kennel inspections – Board Minute 100602 "Kennel Inspections").

<sup>153</sup> Ibid.

<sup>154</sup> "Board Minute 100602 Kennel Inspections": GRNSW Response to Order 1 dated 1 May 2015.

<sup>155</sup> "Combined Board Meeting Agenda 100622, Item 12(a)": GRNSW Response to Order 15 dated 21 September 2015.

<sup>156</sup> "Project Plan": GRNSW Response to Order 1 dated 1 May 2015.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ex A (17-19 November 2015).

The stated reason was that compliance was assigned to the new Education and Welfare Unit of GRNSW.<sup>160</sup>

- 22.26 In January 2014, GRNSW created the position of Welfare and Education Officer to undertake kennel inspections and deliver industry training.<sup>161</sup> According to GRNSW, new inspection/investigation protocols were implemented in conjunction with the appointment of the Education and Welfare Officer. However, the Education and Welfare Officer role ceased to exist in October 2014 (the same time the Joint Investigator role ceased), the stated reason being that the functions of the role were to be subsumed within GRNSW's new Compliance Unit to be established in January 2015.<sup>162</sup>
- 22.27 In 2014, GRNSW produced, for internal use only, a "Field Officer Inspection/Investigation Protocol".<sup>163</sup> GRNSW produced an updated version of the document in 2015.<sup>164</sup> In each instance, the protocol described how GRNSW field officers are responsible for assisting industry participants to comply with the GRNSW Training Code. The protocol provided for three types of compliance checks in respect of the GRNSW Training Code and to oversee the welfare of registered greyhounds, namely:
- regular (random) kennel/property inspections;
  - targeted kennel/property inspections; and
  - licence assessments and education of new participants.
- 22.28 The protocol stated that: "GRNSW has undertaken to inspect and assess the property of every licensed person biannually, with a target of 1,100 inspections per annum."<sup>165</sup>
- 22.29 In January 2015, GRNSW commenced development of a software/database program called "Kennel Locator and Inspection Manager" ("KLAIM"), which was intended to assist GRNSW in recording and accessing information relating to kennel inspections, including which kennels are overdue for an inspection.<sup>166</sup> The development of KLAIM followed recommendations that the Internal Audit Bureau ("IAB") made in 2014 regarding the need for improvements in respect of the planning, scheduling and administration of kennel inspections.<sup>167</sup>
- 22.30 A report provided by IAB dated June 2014, "Greyhound Racing NSW Internal Audit of Animal Welfare" ("the IAB Welfare Audit Report"), was critical of GRNSW's lack of resources for inspections.<sup>168</sup> This aspect is described further below.
- 22.31 In 2015, GRNSW worked with IAB in what GRNSW described as, the "digitalisation" of its kennel inspection process. According to GRNSW, this ongoing process includes the automation of follow-up work directives and risk ratings to determine re-inspection time frames, by the development of an application ("app") that compliance officers in the field will be able to use on a tablet computer.<sup>169</sup>

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<sup>160</sup> GRNSW Response to Order 1 dated 1 May 2015, p. 53.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid, p. 54.

<sup>163</sup> "Education and Welfare – Industry Compliance (internal not for release)": GRNSW Response to Order 1 dated 1 May 2015.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> GRNSW Response to Order 1 dated 1 May 2015, p.19.

<sup>167</sup> IAB, "Greyhound Racing NSW – Internal Audit of Animal Welfare" (June 2014) ("the IAB Welfare Audit Report"). The IAB Welfare Audit Report is Appendix C to GRNSW's submission to the Commission dated 24 August 2015.

<sup>168</sup> IAB Welfare Audit Report, p. 13.

<sup>169</sup> GRNSW Response to Order 1 dated 1 May 2015, pp.19-20.

- 22.32 In January 2015, GRNSW revised its kennel inspection protocol, so as to include provision for what is known as a “Non-Compliance Work Directive”. Following an inspection, a GRNSW field officer may issue the registered participant with a written directive that lists areas of the GRNSW Training Code with which the participant has not complied. The directive will also specify a period of time for the participant to address the area of non-compliance.<sup>170</sup>
- 22.33 According to GRNSW, from February 2015 to April 2015, the Welfare and Compliance Coordinator, Ms Jodie Cargill, provided daily compliance reports, by email, to the General Manager of Education and Welfare, Mr Anthony O’Mara. This was in response to a recommendation by IAB. The daily reports ceased in April 2015, on the advice of GRNSW’s newly appointed Investigations Manager. From April 2015, the GRNSW Welfare and Compliance Coordinator commenced providing statistics to GRNSW’s Interim Chief Executive, Mr Paul Newson, on the number of inspections being conducted.<sup>171</sup> GRNSW states that regular inspection of greyhound facilities will be part of the continued roll-out of the National Greyhound Welfare Strategy that Greyhounds Australasia (“GA”) launched in May 2014.<sup>172</sup>

## Frequency of kennel inspections undertaken by GRNSW

- 22.34 Since its establishment in 2009, GRNSW has not published comprehensive data about the number of kennel inspections it has undertaken. GRNSW’s annual reports from FY09 to FY14 contained no figures about kennel inspections. Figures appeared for the first time in the GRNSW Annual Report 2015, in which GRNSW reported that its compliance officers inspected 1,401 properties of licensed participants in FY15. This was said to be an increase, of more than 250%, on the 399 property inspections undertaken in FY14.<sup>173</sup>
- 22.35 The substantial increase in the number of inspections that GRNSW undertook in FY15 was prompted, in very large part, by the public outcry associated with the broadcast of the *Four Corners program* in February 2015. The volume of inspections that GRNSW undertook prior to the broadcast of the *Four Corners program* was, comparatively, at a much reduced level.

## Evidence before the Commission

- 22.36 The Commission received evidence from industry participants about the frequency of kennel inspections having been undertaken by GRNSW and its statutory predecessor. Aspects of this evidence have been detailed in Chapter 3. A number of the industry participants who, in evidence before the Commission, admitted to having engaged in live baiting also told the Commission they had rarely been the subject of property inspections by GRNSW and its predecessor. Such evidence included:
- Wayne Smith – despite having been involved in the industry for over 30 years at two different properties, he could recall having been the subject of only one inspection, which was on 9 February 2015.<sup>174</sup>
  - Sherrie Turner – from 1998 until July 2015, GRNSW (and its predecessor) conducted only one inspection of her property, in 2014.<sup>175</sup>

<sup>170</sup> GRNSW Response to Order 1 dated 1 May 2015, p. 20.

<sup>171</sup> *Ibid.*, pp. 20-21.

<sup>172</sup> *Ibid.*, p.14.

<sup>173</sup> GRNSW Annual Report 2015, p. 16.

<sup>174</sup> Wayne Smith, 28 September 2015: T98-99.

<sup>175</sup> Sherri Turner, 29 September 2015: T176-177.

- Bruce Carr – whose bull-ring was, on the evidence, a popular location for trainers who participated in live baiting – told the Commission that he had been at his property for 30 years and that, prior to January 2015, it had only ever been inspected on one occasion. This was some ten years ago, by GRNSW’s predecessor.<sup>176</sup>

22.37 The Commission received evidence that GRNSW was not sufficiently resourced to undertake large volumes of kennel inspections.

22.38 Mr Norm Becroft was employed as a steward with GRNSW for 18 months, from March 2014 to about August 2015. Mr Becroft told the Commission that, while working at GRNSW, he assumed that stewards were responsible for undertaking kennel inspections but they simply did not have the manpower to do them. He said the stewards worked “phenomenal hours” doing other duties. Mr Becroft said that, during the whole time he worked at GRNSW, he undertook only about one property inspection.<sup>177</sup>

22.39 Mr O’Mara was employed by GRNSW from 2009 until 15 May 2015. He worked in connection with compliance and welfare issues. At the time that he left GRNSW, he held the position of General Manager of Education and Welfare. Mr O’Mara gave evidence to the Commission to the effect that, while he was at GRNSW, the compliance and inspection functions of GRNSW were chronically under-resourced.<sup>178</sup> Mr O’Mara also said that, in May 2015, when he left GRNSW, the compliance and inspection unit was still under-resourced. He said the ideal number of inspectors was six, and GRNSW then had only three.<sup>179</sup>

22.40 Mr Newson gave evidence that, upon his arrival at GRNSW, in early to mid-2015, the regulatory compliance unit within the organisation was significantly under-resourced. He said there were, in effect, only two full-time employees, and two part-time employees sharing about 90% of the load of one person, conducting all inspections across NSW. Further, those persons were, in effect, working out of the back of their cars in undertaking that process.<sup>180</sup>

## The IAB Report

22.41 The evidence the Commission received, described above, is consistent with the findings of the IAB Report of June 2014 which was critical of the lack of resources devoted to kennel inspections. The IAB Report relevantly said:

... there are numerous kennels across a wide geographical area within NSW. Two [GRNSW] staff are employed to conduct initial and follow up site visits. The staffing appears to be inadequate to cover the wide geographical spread of sites. In addition, the current staff structure does not allow for follow up visits to occur in a timely manner. If a ‘work direction’ is issued due to a fault found during a site visit, there are often inadequate resources available to re-visit that site. This means that the issue may not be addressed, thus placing greyhound welfare at risk.<sup>181</sup>

22.42 Although, as noted above, in 2010 GRNSW adopted a protocol to increase kennel inspections to at least once every two years from 1 July 2011, it is clear that this goal was not achieved. Further, the properties of many industry participants were either rarely or never inspected by GRNSW prior to February 2015, including particular persons who, as the evidence indicates, were involved in live baiting.

<sup>176</sup> Bruce Carr, 30 September 2015: T290.

<sup>177</sup> Norm Becroft, 30 September 2015: T256-257.

<sup>178</sup> Anthony O’Mara, 3 February 2016: Ex WW (17-18 February 2016), T6.20-38.

<sup>179</sup> Anthony O’Mara, 3 February 2016: Ex WW (17-18 February 2016), T8.44-9.4.

<sup>180</sup> Paul Newson, 2 October 2015: T403.28-35.

<sup>181</sup> IAB Welfare Audit Report, p. 13.

## The Select Committee

22.43 It should be noted that the NSW Legislative Council’s 2014 Select Committee on Greyhound Racing in NSW (“the Select Committee”) similarly received material about the lack of inspections being undertaken by GRNSW. In its First Report, dated 30 March 2014 (“Select Committee First Report”), the Select Committee relevantly said:

A number of submissions to the inquiry indicated that kennel inspections had not occurred quite as regularly as GRNSW intended. Mr Raymond Lee, for example, reported that he had ‘only one inspection in 55 years and some trainers have never been inspected.’ Another inquiry participant observed, ‘I have met people when walking my dogs that have told me they have been in the industry for 20 or 30 years and have never had their properties inspected.’<sup>182</sup>

22.44 The Select Committee recommended: “That Greyhound Racing NSW ensure that kennel inspections are conducted at least once every two years for all licensed premises.”<sup>183</sup>

## Kennel inspection data compulsorily obtained from GRNSW

22.45 As noted, from 2009 and up until the publication of the GRNSW Annual Report 2015 in late 2015, GRNSW failed to publicly report the number of kennel inspections it had undertaken. This failure to report reflects an unsatisfactory lack of transparency on the part of GRNSW. It also sits poorly with the industry’s dependence upon a social licence to operate.

22.46 The Commission used its compulsory powers to attempt to obtain information from GRNSW about the extent of inspections in fact undertaken. Internal GRNSW documents reveal that in 2009, only 402 kennel inspections were conducted, representing about 10% of licensed persons.<sup>184</sup>

22.47 For the period from 2009 to 2015, GRNSW produced an inspection log that purports to record the number of inspections that GRNSW field officers undertook. An analysis of the data from the GRNSW inspection log (at table 22.1) suggests that the number of inspections that GRNSW undertook, for the relevant period, is as follows:

**Table 22.1 Total number of kennel inspections undertaken by GRNSW: 1 May 2009 to 23 July 2015**

Year	No. of inspections
2009 (1/5/09 to 31/12/09)	99
2010	215
2011	321
2012	452
2013	304
2014	901
2015 (1/1/15 to 23/7/15)	1,731
Total	4,023

Source: GRNSW Response to Order 3 dated 13 August 2015.

22.48 Even assuming their accuracy (as to which see further below), these figures reveal that GRNSW’s performance fell well short of the target of 1,100 kennel inspections per year under the kennel inspections protocol adopted with effect from 1 July 2011.

<sup>182</sup> Select Committee, “Greyhound Racing in New South Wales – First Report” (March 2014) (“the Select Committee First Report”), p. 81.

<sup>183</sup> Select Committee First Report, p. xiii.

<sup>184</sup> Board Minute 100602 “Kennel Inspections”: GRNSW Response to Order 1 dated 15 May 2015. Note: the document further indicated that in 2008, some 520 kennel inspections were conducted by GRNSW’s predecessor, representing about 13% of licensed premises.

22.49 There is, however, reason to treat the GRNSW figures, even though relatively modest in numbers, with a degree of caution. The figures may, in some respects, be over-inflated, even if inadvertently so. Thus, for example, it is not uncommon for more than one licensed participant to live on the same property. They may be married or otherwise members of the same family. A review of the GRNSW log reveals multiple instances of inspections of premises undertaken by GRNSW of a property at which two licensed participants reside and which is recorded by GRNSW as being, in effect, two inspections undertaken, rather than just a single inspection of the property.<sup>185</sup>

### Increased inspections from February 2015

22.50 An analysis of the data from the GRNSW inspection log reveals a substantial increase in the number of inspections that GRNSW conducted from February 2015 onwards, compared to the period from May 2009 to the end of January 2015. The increased focus on kennel inspections from February 2015 appears clearly to be related to the broadcast of the *Four Corners* program in February 2015 relating to live baiting. The matter is illustrated by table 22.2.

**Table 22.2 Comparison of kennel inspections undertaken pre-*Four Corners* and post-*Four Corners***

Period	No. of inspections	Inspections per month	% increase between periods
1/5/09 to 31/1/15 (5 years, 8 months)	2,827	41.6	--
1/2/15 to 23/7/15 (<7 months)	1,196	170.9	311%
Total	4,023	--	--

Source: GRNSW Response to Order 3 dated 13 August 2015.

22.51 The table illustrates that, in the 6.5 months after GRNSW became aware of the *Four Corners* program (taken to be 1 February 2015), an average of 170.9 inspections were conducted per month. This is a 311% increase on the average number of inspections conducted per month in the preceding five years and eight months. Before GRNSW was aware of the *Four Corners* program, the average number of inspections per month was only 41.6.

### The frequency of inspections is important

22.52 As noted in Chapter 9, GRNSW told the Commission that, while frequency of industry inspections is a relevant consideration, “high volume inspection targets are illusory and inconsistent with contemporary regulatory practice”. GRNSW claimed that merely increasing the volume of regulatory inspections is not sufficient to improve oversight of the industry. GRNSW states that it is in the course of implementing what it describes as an “intelligence-led, outcomes-focused and risk-based approach to kennel inspections”.<sup>186</sup>

22.53 The Commission accepts that it is appropriate for GRNSW to have regard to applicable intelligence and to adopt, at least in part, a risk-based approach in regards to kennel inspections. However, the Commission is firmly of the view that the frequency of kennel inspections is a critical factor with respect to the welfare of greyhounds and the potential detection of participants who may engage in live baiting. Industry participants were prepared to live bait and keep greyhounds in sub-optimal conditions because, at least in part, they considered the

<sup>185</sup> Further, follow-up inspections of a property – after a field officer issues a directive that something must be addressed – are recorded as a further inspection. The recording of this as a further inspection may not be inappropriate per se, but it does reveal that the total number of inspections recorded should not be regarded as equating to the same number of different locations having been inspected.

<sup>186</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [346].

prospect of being inspected, or inspected without notice, as being remote. This aspect is dealt with further in Chapter 9.

## Lack of oversight and transparency: kennel inspections

- 22.54 As noted, from 2009 until about late 2015, GRNSW failed to report publicly the extent of its kennel inspections. This represents an unsatisfactory lack of transparency on the part of GRNSW. Given that, as described in Chapter 1, the greyhound racing industry needs a social licence to operate, it is wholly unsatisfactory that the body tasked with regulating the industry has failed to publish comprehensive data about the extent of inspections undertaken, particularly when such inspections are, potentially at least, an important tool for helping to ensure the welfare of greyhounds. Publication of the number of regular inspections would have driven home to industry participants that they were at risk of an inspection and would have assisted in ensuring that appropriate animal welfare standards were met.
- 22.55 GRNSW's annual reports FY09 to FY14 contained no figures about kennel inspections. Published figures appeared for the first time in GRNSW's Annual Report 2015. The Commission is of the view that GRNSW should publish accurate data about the number of inspections undertaken in its annual report each year.
- 22.56 Kennel inspections are, potentially at least, an essential tool for the protection of the welfare of greyhounds. In 2010 GRNSW adopted a policy, with effect from 1 July 2011, which stated that a registered participant's property should be inspected at least once every two years. This then equated to 1,100 inspections a year. The Commission compulsorily obtained information from GRNSW about the extent of inspections undertaken. Questions arise as to the reliability of the data produced, which may be over-inflated, even if inadvertently so. However, even on GRNSW's own figures, the number of inspections that GRNSW undertook does not go close to matching the requirement of GRNSW's inspection policy, at least prior to 2015.
- 22.57 The Commission is firmly of the view that, at least prior to February 2015, GRNSW failed to implement an appropriate kennel inspection strategy that involved relatively frequent and random inspections of participant's properties. The number of inspections in fact undertaken was inadequate.
- 22.58 Relatively frequent and random kennel inspections are critical in seeking to ensure the welfare of greyhounds and to better position the regulator to detect if live baiting may be taking place. The Commission is of the view that, at least prior to February 2015, industry participants were prepared to keep greyhounds in sub-optimal conditions and to live bait, because, at least in part, they did not believe they were at any real risk of being subject to a random kennel inspection.
- 22.59 Since 2009 to at least mid to late 2015, GRNSW failed to publish figures about the number of kennel inspections that it undertook. It was only in late 2015, in the GRNSW Annual Report 2015, that GRNSW publicly reported on the number of inspections undertaken in a financial year. GRNSW has also failed to publish associated data relating to kennel inspections such as a high-level summary of the outcomes of its inspections over a specific period.
- 22.60 Given that the greyhound racing industry needs a social licence to operate, it is unsatisfactory that the industry regulator has failed to publicly report comprehensive data on the number of inspections undertaken, given that such inspections are, potentially at least, an important tool in helping to ensure the welfare of greyhounds. Such a stance evidences an undesirable lack of transparency on the part of GRNSW.
- 22.61 The Commission is of the view that GRNSW should publicly report accurate data about the number of inspections undertaken in its annual report each year and also publicly report at least a high-level summary of the outcome of its inspections over a defined period.

## Trial tracks

- 22.62 Trial tracks are circular racing tracks, typically about 300m to 400m, which are smaller than the regular race tracks used for race meetings. Trial tracks are often used when breaking-in greyhounds before heading to the actual race track. GRNSW describes access to trialling facilities as critical for trainers during the education phase of their dogs and also for maintaining the fitness of their racing greyhounds as part of ongoing training activities.<sup>187</sup>
- 22.63 Section 3(1) of the Act defines “greyhound trial track” as meaning:
- ... land (not being a racecourse licensed under the Racing Administration Act 1998 for greyhound racing meetings) that is held out by any person having the management or control of the land, whether as owner, lessee, occupier or otherwise, as being available for the purpose of enabling greyhounds, other than those owned by, or leased to, that person, to compete in trials or be trained in racing.
- 22.64 The Act also defines “greyhound racing” as meaning “racing between greyhounds in competitive pursuit of an artificial lure, and includes ... (a) a greyhound trial or training race”.<sup>188</sup>

## Trial tracks must be registered

### The Act

- 22.65 Section 9(2)(b) of the Act provides that the functions of GRNSW include “to register ... greyhound trial tracks ...”. Section 17(1) relevantly provides that GRNSW may, in accordance with the Rules, “register or refuse to register ... (b) any greyhound trial track.” Section 17(2) provides that GRNSW must not refuse to register a greyhound trial track unless GRNSW is of the opinion that:
- the greyhound trial track is not, or will not be, financially viable in relation to participation in the greyhound racing industry, or
  - the registration of the greyhound trial track has previously been cancelled, or
  - it would be in the best interests of the greyhound racing industry to do so.
- 22.66 Section 20(2) of the Act provides that GRNSW may, in accordance with the Rules, suspend or cancel the registration of any greyhound trial track. GRNSW must not do so, however, unless GRNSW is of the opinion that:
- the greyhound trial track is not, or will not be, financially viable in relation to participation in the greyhound racing industry, or
  - it would be in the best interests of the greyhound racing industry to do so.
- 22.67 Under s. 21 of the Act, GRNSW may also, in accordance with the Rules, cancel the registration of any greyhound trial track for disciplinary purposes or for the purposes of work health and safety.
- 22.68 Section 22 is an offence provision in respect of greyhound trial tracks that are not registered. In particular, s. 22 provides that a person who as owner, lessee, occupier or who otherwise has the management or control of a greyhound trial track that is required to be registered in accordance

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<sup>187</sup> GRNSW website, “Trial Tracks”: <<http://www.thedogs.com.au/DPage.aspx?id=124>> (accessed 25 May 2016).

<sup>188</sup> The Act s. 3(1). Note that s. 3(2) defines a “person associated with greyhound racing” – an expression used in various parts of the Act – as including “a person who manages or controls a greyhound trial track”.

with the Rules, and is not so registered, is guilty of an offence and liable to a penalty not exceeding four penalty units.<sup>189</sup>

## The Rules

- 22.69 Rules 150 to 150P deal with the registration of greyhound trial tracks. Pursuant to R 150B(1), an application for registration of a greyhound trial track must be in an approved form and specify the individual who is to be the manager of that trial track and be signed by that person.
- 22.70 Pursuant to R 150B(4), it is an offence for a person to authorise or conduct a greyhound trial: (a) at any place other than a trial track registered in accordance with the Rules; or (b) otherwise than under the control of the manager (or registered holder) of a registered greyhound trial track.
- 22.71 Rule 150G(1) provides that, in respect of any application for registration (or renewal) of a greyhound trial track, or as a manager or assistant manager of a greyhound trial track, GRNSW may: (a) grant the application and issue a certificate of registration; or (b) refuse the application “if it is of the opinion that the refusal is in the interests of greyhound racing.” Rule 150G(2) provides that GRNSW is not required to provide reasons for a decision refusing an application. If, however, GRNSW proposes to refuse an application for renewal of registration, it must give the applicant seven days’ notice in order to allow the applicant to make representations.<sup>190</sup>
- 22.72 The term of registration of a greyhound trial track is from the date of registration until 31 December each year, unless the registration is cancelled earlier.<sup>191</sup> The registration of a manager or assistant manager of a trial track remains in force until cancelled by GRNSW.<sup>192</sup>
- 22.73 Under R 150M, a greyhound trial track must not be used, or open for use, unless the manager is personally present at the track (or, in his or her absence as approved by GRNSW, a person approved as acting manager of the track). GRNSW told the Commission in May 2015 that it has never taken any steps to implement or enforce R 150M.<sup>193</sup>
- 22.74 A registered person must not permit any greyhound under his or her care, custody or training to be on a greyhound trial track that is not registered by GRNSW.<sup>194</sup> Betting or wagering is prohibited at any place where a greyhound trial or training race is held.<sup>195</sup> The making of a charge for admission of persons (other than persons in charge of greyhounds) to a greyhound trial track is prohibited.<sup>196</sup>
- 22.75 As noted above, under R 150P, a GRNSW steward or other officer may, at all reasonable times (and upon providing proof of identity), enter and inspect any registered trial track and anything connected to the trial track, other than a dwelling house. The GRNSW officer may also require any registered person – such as the track manager – to furnish such information as the official considers reasonably necessary for the purpose of administering the Rules.

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<sup>189</sup> The value of a penalty unit is prescribed in s.17 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). Currently, one penalty unit is equal to \$110. Four penalty units thus equates to the relatively small fine of \$440.

<sup>190</sup> The Rules R 150G(3).

<sup>191</sup> The Rules R 150H(1).

<sup>192</sup> The Rules R 150I.

<sup>193</sup> GRNSW Response to Order 1 dated 1 May 2015, p. 91.

<sup>194</sup> The Rules R 150N.

<sup>195</sup> The Rules R 150Q.

<sup>196</sup> The Rules R 150Q.

## Registered trial tracks

22.76 As at June 2016, GRNSW has seven trial tracks registered in accordance with the Rules and its “Trial Track Registration Policy”, namely:

- Abernathy Trial Track;
- Cardiff Greyhound Social Club;
- Casino Trial Track;
- Cessnock Trial Track;
- Keinbah Trial Track;
- Sunny Lodge Education Centre; and
- Wollondilly Trial Track.<sup>197</sup>

## Trial Track Registration Policy

22.77 From at least November 2009, GRNSW has published a “Trial Track Registration Policy”. It is a short document – two pages of text – that summarises some of the applicable provisions of the Act and Rules and describes the procedure for a person seeking registration of a trial track.<sup>198</sup>

22.78 In response to an Order requiring the provision of information, GRNSW informed the Commission that the Trial Track Registration Policy “requires registered trial tracks to adhere to standards of animal welfare”.<sup>199</sup> This is incorrect. The policy makes no reference to animal welfare standards. Rather, the policy states the applicable objectives as being to protect the financial viability and reputation of the industry and to protect and develop the interest of the industry and its stakeholders generally.<sup>200</sup>

22.79 Nor do the relevant provisions of the Act or the Rules relating to trial tracks make explicit reference to animal welfare, although the reference to an ability by GRNSW to refuse registration if it would be “in the best interests of the greyhound racing industry to do so” would, at least indirectly, permit consideration of animal welfare considerations.

## GRNSW applies its Trial Track Registration Policy to ‘public’ trial tracks only

22.80 GRNSW informed the Commission that it applies its Trial Track Registration Policy to ‘public’ trial tracks only. GRNSW says that, since its inception, the policy has been applied to public trial tracks (ie. commercial operations that open their gates to the public and registered participants and charge people for the use of their facilities). GRNSW states that, “private trial tracks used by the owners of a property have not been registered in the past.”<sup>201</sup>

22.81 The definition of “greyhound trial track” in the Act does not require that people pay for admission or that its gates be open to the public. Nor do the Rules contain a definition of ‘greyhound trial track’ that introduces such limitations. It is not apparent why GRNSW takes the view that trial tracks in respect of which people are not charged an admission fee, or those

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<sup>197</sup> GRNSW website, “2016 Trial Track Registrations”: <<http://grnsw.com.au/news/2016-trial-track-registrations>> (accessed 27 May 2015).

<sup>198</sup> GRNSW website, “Trial Track Registration Policy”: <<http://www.thedogs.com.au/Uploads/160304%20Trial%20Track%20Registration%20Policy.pdf>> (accessed: 25 May 2016).

<sup>199</sup> GRNSW Response to Order 1 dated 1 May 2015, p. 93.

<sup>200</sup> GRNSW website, “Trial Track Registration Policy”: <<http://www.thedogs.com.au/Uploads/160304%20Trial%20Track%20Registration%20Policy.pdf>> (accessed: 25 May 2016), p. 2.

<sup>201</sup> GRNSW Response to Order 1 dated 1 May 2015, p. 94.

which are not open to the public as a whole, are not required to be registered under the Rules and are not subject to the Trial Track Registration Policy.

22.82 There is a need for regulation of private trial tracks. This aspect is dealt with further in Chapter 8 in which the Commission recommends that private trial tracks should be regulated. In particular, as stated in Chapter 8, the Commission recommends that:

- private trial tracks should be licensed;
- veterinarians should be required to be in attendance at all trials at public trial tracks; and
- veterinarians should not be required to be present at private trial tracks, however, only greyhounds owned or leased by the licensee should be allowed to trial at private trial tracks.

## GRNSW inspection of trial tracks

22.83 GRNSW also advised that, as at May 2015, it had undertaken only three inspections of trial tracks since 10 April 2010.<sup>202</sup> The three trial tracks inspected were Box Hill,<sup>203</sup> Glengarrie and Wollondilly. The inspections were all undertaken on the same day, namely 11 December 2012.<sup>204</sup>

22.84 The very limited number of inspections undertaken is a matter of concern. Trial tracks are a venue at which live baiting was, and may be, undertaken.

22.85 GRNSW has not sought to inspect unregistered trial tracks.

### Lack of oversight and transparency: trial tracks

22.86 GRNSW has implemented a trial track registration policy but does not apply that policy to, or require registration of, greyhound trial tracks that are not what GRNSW describes as “public trial tracks”. By “public trial tracks”, GRNSW means commercial operations that open their gates to the public and registered participants and charge people for the use of their facilities. This leaves, potentially, a significant number of trial tracks that GRNSW does not regard as requiring registration and thus also not subject to inspections. GRNSW’s approach is of significant concern. Neither the Act nor the Rules define a “greyhound trial track” in a manner that includes the limitations applied by GRNSW in respect of the application of its policy. GRNSW should not apply its policy in such a limited manner as it does.

22.87 The matter is significant because what may be regarded, on GRNSW’s view, as non-public trial tracks may be venues at which concerns arise in respect of animal welfare, including places at which live baiting may occur.

22.88 Recommendations regarding the regulation of private trial tracks are set out in Chapter 8.

22.89 In respect of the trial tracks that it has in fact registered (currently seven for 2016), GRNSW undertook only three inspections in the period from 10 April 2010 to May 2015. Those three inspections were undertaken on the same day, namely 11 December 2012. This is manifestly inadequate. GRNSW should adhere to a process that ensures relatively frequent and random inspections of greyhound trial tracks.

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<sup>202</sup> GRNSW Response to Order 1 dated 15 May 2015, p. 93.

<sup>203</sup> On 16 December 2015, John Cauchi, who had been the licensed Manager of the Box Hill Trial Track, was convicted of live baiting offences after pleading guilty.

<sup>204</sup> GRNSW Response to Order 1 dated 15 May 2015, p. 93.

## Recommendations

56. Greyhound Racing NSW or any new regulator should undertake frequent and random kennel inspections.
57. Greyhound Racing NSW or any new regulator should publicly report accurate data concerning the number of inspections undertaken in its annual report each year and include a high-level summary of the outcome of its inspections.



## 23 Licensing of industry participants

### Introduction

- 23.1 Greyhound Racing NSW (“GRNSW”) is the controlling body of the greyhound racing industry in NSW. GRNSW was established by s. 4(2) of the *Greyhound Racing Act 2009* (“the Act”).
- 23.2 Key provisions relating to the licensing of persons and entities associated with greyhound racing in NSW are contained in the Act and the rules made in accordance with the Act. This Chapter examines these provisions and related issues arising in respect of the licensing and/or registration of industry participants.

### Statutory provisions relating to licensing

- 23.3 The Act contains provisions describing the functions of GRNSW and conferring powers on GRNSW in relating to licensing and registration in connection with the greyhound racing industry. Many of these powers are stated as being exercisable “in accordance with the rules”.

### Powers conferred on GRNSW

- 23.4 Pursuant to s. 9(2) of the Act, the functions of GRNSW include:
- (a) to control, supervise and regulate greyhound racing in the State,
  - (b) to register greyhound racing clubs, greyhound trial tracks, greyhounds, owners and trainers of greyhounds, bookmakers for greyhound racing and other persons associated with greyhound racing.
- 23.5 Section 3(3) of the Act provides that, unless the regulations otherwise provide,<sup>205</sup> a reference in the Act “to registration includes a reference to licence”, and a reference “to register includes a reference to license” and “to registered includes a reference to licensed”.
- 23.6 Section 10(1) provides that GRNSW has the power to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions. Section 10(2) sets out, in non-exhaustive terms, particular powers that GRNSW has, including the power to:
- a) supervise the activities of greyhound racing clubs, persons registered by GRNSW and all other persons engaged in or associated with greyhound racing (s 10(2)(b));
  - b) prohibit a person from attending or taking part in a greyhound racing meeting (s 10(2)(h)); and
  - c) impose a penalty on a person registered by it or on any owner of a greyhound for a contravention of the rules (s. 10(2)(i)).
- 23.7 Section 11(1) describes the registration functions of GRNSW as follows:
- GRNSW is to exercise its registration functions so as to ensure that any individuals registered by GRNSW are persons who, in the opinion of GRNSW, are fit and proper persons to be so registered (having regard to the need to protect the public interest as it relates to the greyhound racing industry).

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<sup>205</sup> Currently, no regulations have been made under the Act.

- 23.8 Section 11(2) provides that, without limiting subsection (1), a person is not to be so registered if the person has a conviction and GRNSW is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be so registered.<sup>206</sup>
- 23.9 Part 3 of the Act (ss. 17-28) is entitled “Control and regulation of greyhound racing”. Section 17 relates to the registration of greyhound racing clubs and trial tracks.
- 23.10 Section 18 deals with the registration of greyhounds and persons associated with greyhound racing and provides:

**18 Registration of greyhounds and persons associated with greyhound racing**

(1) GRNSW may, in accordance with the rules, register or refuse to register any greyhound, or any owner, trainer or bookmaker or other person associated with greyhound racing.

(2) GRNSW must not refuse to register any greyhound or any person under subsection (1) unless it is of the opinion that it would be in the best interests of the greyhound racing industry to do so.

- 23.11 Section 21 relevantly deals with disciplinary action that GRNSW may take. Section 21(1) provides that, in accordance with the rules, GRNSW may, among other things:

- a) cancel the registration of any owner, trainer or bookmaker or other person associated with greyhound racing (s. 21(1)(iv));
- b) disqualify, either permanently or temporarily, any owner, trainer or bookmaker or other person associated with greyhound racing (s. 21(1)(b));
- c) prohibit any person from participating in or associating with greyhound racing in any specified capacity (s. 21(1)(d));
- d) impose fines, not exceeding 200 penalty units,<sup>207</sup> on any greyhound racing club or on any owner, trainer or bookmaker or other person associated with greyhound racing for breaches of the rules (s. 21(1)(f)); and
- e) suspend, for such term as GRNSW thinks fit, any right or privilege conferred by the Act or rules on any owner, trainer or bookmaker or other person associated with greyhound racing (s. 21(1)(g)).

**“Person associated with greyhound racing”**

- 23.12 As noted, in a number of provisions – for example, ss. 9(2), 18, and 21(1)<sup>208</sup> – the Act uses the expression, a “person associated with greyhound racing”. Section 3(2) relevantly defines that expression as being a reference to:

- (a) a person who handles greyhounds at a greyhound race or trial,
- (b) a bookmaker’s clerk,
- (c) a greyhound breeder,
- (d) a person who manages or controls a greyhound trial track,
- (e) a person who is an officer or employee of a greyhound racing club or is otherwise concerned in the management or control of any such club.

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<sup>206</sup> The Act s. 11(3) makes clear that s. 11 does not limit any provisions of the rules relating to the exercise of the registration functions of GRNSW.

<sup>207</sup> The value of one penalty unit is prescribed in s.17 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). Currently one penalty unit is equal to \$110. Two hundred penalty units thus equates to \$22,000.

<sup>208</sup> Note also the Act s. 10(2)(b).

### ***“The rules”***

- 23.13 The Act makes reference to “the rules” in a number of provisions – see, for example, ss. 9(4), 10(1)(g) and (i), 11(3), 17(1) and 18(1). Section 3(1) of the Act defines “rule” as meaning “a rule made under this Act”.
- 23.14 Section 23 of the Act is entitled “Rules in relation to greyhound racing” and s. 23(1) provides that GRNSW may make rules, not inconsistent with the Act or any regulations, “for or with respect to the control and regulation of greyhound racing”.
- 23.15 Section 23(2) lists, in non-exhaustive fashion, matters in respect of which GRNSW may make rules. This relevantly includes “any of the matters referred to in Division 1”, being a reference to Division 1 of Part 3 of the Act (ss. 17-22), which relates to “Registration”.

## **The Rules**

- 23.16 GRNSW has made rules pursuant to its rule-making power under s. 23 of the Act. The rules are entitled “GRNSW Greyhound Racing Rules” (hereinafter, “the Rules”). They were recently consolidated, with amendments, as at 14 April 2016.
- 23.17 The Rules comprise a combination of rules issued originally by Greyhounds Australasia (“GA”) and what are referred to “Local Rules” that GRNSW has made as the controlling body for NSW. Where there is any conflict between the GA rules and the Local Rules, the Local Rules take precedence.<sup>209</sup> Further, if a GAR is amended in any way it must first be adopted by a resolution of the local controlling body (ie. GRNSW) before it is taken to apply in NSW.<sup>210</sup>
- 23.18 While rules issued by GA are often referred to with the prefix “GAR”, in the Rules they are given the prefix “R”. Local Rules are given the prefix “LR”.

### **Deficiencies in the Rules**

- 23.19 The Rules are a cumbersome and poorly drafted document. The Rules lack any overall structure. Numerous rules – such as LR 17A including in so far as it links with R 17 – are awkward and grammatically challenging.<sup>211</sup> Other rules are, in part, duplicative.<sup>212</sup> Various rules are placed numerically out of order.<sup>213</sup> One rule (LR 150K) refers to “this Part” and to “Part 8” in circumstances where the Rules are not divided into Parts and there is no “Part 8” (with there also being no “Part 8” in the Act). Even putting to one side significant deficiencies in their content, the Rules could be improved by greater clarity in drafting and structure. Adopting the modern parlance, the Rules are not a ‘user-friendly’ document for industry participants.
- 23.20 There are significant deficiencies in the content of the Rules. Although the Rules mandate that certain categories of persons must register with GRNSW, including breeders (LR 125), syndicates (Rules 122 and 144(a)), promoters of public syndicates (R 151), managers and assistant managers of trial tracks (LR 150F and LR 150G), and bookmakers and bookmakers clerks (LR 151), there is no clearly expressed requirement under the Rules<sup>214</sup> that trainers, owners and handlers – key industry participants – must be licensed or registered with GRNSW.

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<sup>209</sup> The Rules R 7.

<sup>210</sup> The Rules R 8.

<sup>211</sup> See also, for example, R 48 referring to a catcher as “a person authorised by the Stewards is in attendance ...”.

<sup>212</sup> See, for example, LR 122B(1) and R 144(a).

<sup>213</sup> LR 150 and following are positioned after R 157.

<sup>214</sup> Or the Act.

- 23.21 There are, however, some provisions of the Rules that appear to assume that trainers, owners and handlers will be registered but do not, in any express or clear manner, impose an obligation on such a person to be registered or licensed. Thus, for example, R 1 defines a “trainer” as meaning a person registered by the Controlling Body (GRNSW) to train a greyhound for a purpose pursuant to the Rules. As will be seen, an express obligation on a trainer to be registered with GRNSW appears not in the Act and not in the Rules made under the Act, but only in an updated version of the Code of Practice for the Keeping of Greyhounds in Training (“the GRNSW Training Code”) that GRNSW issued in June 2015.<sup>215</sup> The GRNSW Training Code is seemingly a “policy adopted by” GRNSW, and R 86(ag) provides that a person shall be guilty of an offence if the person “fails to comply with a policy adopted by a Controlling Body.”<sup>216</sup>
- 23.22 Further, R 101(2) provides that a (presumably licensed) owner or trainer shall not permit an unlicensed person to train at any place, or handle on any racecourse, a greyhound owned by or pursuant to the control of the owner or trainer.
- 23.23 This may be contrasted with the position in, for example, Victoria, where the Victorian rules of racing impose a clear obligation on trainers, owners and attendants to register with Greyhound Racing Victoria (“GRV”).<sup>217</sup>

### The rules relating to licensing of industry participants

- 23.24 Rule 1 defines “registered person” as “a person registered or licensed by a Controlling Body”. A “controlling body” relevantly means the controlling authority having control of greyhound racing in Australia or New Zealand, such as GRNSW.
- 23.25 Pursuant to R 15, GRNSW may prescribe categories of registration relative to a greyhound racing participant relating to greyhound racing.
- 23.26 Rule 15 further provides that GRNSW may, when considering an application for registration, grant the application (including pursuant to conditions), refuse the application, and may cancel a registration or suspend, vary, alter or add to the conditions of a registration.
- 23.27 The expression “greyhound racing participant”, as appearing in R 15, is not defined. Registered and/or licensed persons are commonly referred to as “industry participants”. In some cases, a person can be registered as an industry participant, or a person associated with greyhound racing, without having to hold a licence issued by GRNSW. An example is a lure driver,<sup>218</sup> who GRNSW can approve and register under R 53.<sup>219</sup> There is typically no fee payable for such registration, as distinct from the issue of a ‘licence’ issued by GRNSW which may entail payment of a prescribed fee. A registered person must, upon request of a steward or other racing official, produce the current registration card issued to the person.<sup>220</sup>
- 23.28 A person who has been issued with a GRNSW licence may, for convenience, be referred to as a “licenced participant”, while a person who does not hold a licence but is registered with GRNSW may be referred to as a “registered participant”.

<sup>215</sup> Ex B (17-19 November 2015), [1.5]: “A Trainer must be licensed in accordance with the GRNSW Greyhound Racing Rules to train a greyhound.”

<sup>216</sup> GRNSW took a different approach, in terms of drafting, in connection with the GRNSW Breeding Code. LR 125(3) mandates that a “registered breeder must comply with the GRNSW Code of Practice for Breeding, Rearing and Education.” In addition, LR 125(4) relevantly states that a person who contravenes LR125 (3) is guilty of an offence.

<sup>217</sup> Greyhound Racing Victoria, Rules of Racing, R 11.1: “Persons who wish to be Owners, Trainers or Attendants of greyhounds must be registered with the Board and must make application in such manner, pay such fee and comply with such conditions as may be prescribed from time to time by the Board.”

<sup>218</sup> A lure driver drives the mechanical bunny (lure) which the greyhounds chase in a race.

<sup>219</sup> R 53(3) provides that a club shall not appoint a person as a lure driver for a meeting unless GRNSW has approved that person.

<sup>220</sup> The Rules LR 28.

- 23.29 Local Rule 122F provides that GRNSW may grant or refuse an application for registration as an owner, trainer or attendant, or on behalf of a partnership or syndicate. Such application may be refused if GRNSW is of the opinion that “the refusal is in the interests of greyhound racing”.<sup>221</sup> The Commission notes that, although the Act states that a reference to registration includes a reference to a licence,<sup>222</sup> in practice, and as described below, it is an important distinction that trainers and attendants are, in fact, licensed participants whereas owners are merely required to be registered with GRNSW.
- 23.30 GRNSW is required to keep registers recording the names of all registered (including licensed) persons, including owners, trainers, attendants, or other individual persons registered by GRNSW.<sup>223</sup>
- 23.31 GRNSW may also prescribe forms to be completed and lodged with it in respect of any matter in connection with greyhound racing, and may prescribe the fees payable to it in respect of any such matters.<sup>224</sup> This may include fees in respect of any applicant, grant, approval or notification.<sup>225</sup>

### **Suspended or disqualified industry participants**

- 23.32 A person who is suspended is not entitled to recognition by GRNSW as an owner, trainer or breeder of any greyhound (or for any purpose affecting these activities); is not permitted to transfer any training responsibilities for any greyhound they train; must continue to comply with the Rules or any GRNSW policies as though their registration had not been suspended; and is not permitted to conduct any business affecting the registration of greyhounds or participants with GRNSW.<sup>226</sup>
- 23.33 A GRNSW licence, certificate of registration or other authority held by a disqualified person automatically lapses upon disqualification.<sup>227</sup> In addition, a person who is disqualified, warned off, or declared to be a defaulter is not entitled to hold any registration, licence, certificate or permit issued by GRNSW; is not entitled to recognition as an owner, trainer or breeder of greyhounds (or for any purpose affecting these activities); must not enter any racecourse, or place under the control of a greyhound racing club or GRNSW, or attend any race meetings or any place where greyhounds are trained, kept or raced; and is not permitted to conduct any business affecting the registration of greyhounds or participants with GRNSW.<sup>228</sup>

### **Categories of registration: industry participants**

- 23.34 The following categories of participants are required to be licensed or registered with GRNSW:
- Owner (including partnerships and syndicates)
  - Owner-Trainer
  - Trainer (public or private)
  - Attendant
  - Studmaster

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<sup>221</sup> See also the Act s. 18(2).

<sup>222</sup> The Act s. 3(3).

<sup>223</sup> The Rules LR 122(1).

<sup>224</sup> The Rules R 17.

<sup>225</sup> The Rules LR 17B(2).

<sup>226</sup> The Rules LR 99B(3).

<sup>227</sup> The Rules LR 99C(1).

<sup>228</sup> The Rules LR 99B(1).

- Trial Track Manager
- Assistant Trial Track Manager.

23.35 The above categories of participants were required to be licensed or registered from at least 2009 onwards.

23.36 In addition, from 1 July 2015, breeders have been required to be registered with GRNSW. The provisions relating to breeders are described further below.

23.37 As will be seen, there is presently no requirement for particular, important categories of industry participants to be licensed in NSW. This includes separate licence requirements for educators (breakers) and pre-trainers. In addition, the basis – both as a matter of law and practice – on which GRNSW purports to require educators to be registered is presently unclear. In addition, it is highly doubtful as to whether GRNSW has any power, under the Rules it has made, to enter and inspect breaking-in establishments.

## Applications and renewals

23.38 To apply for registration, an applicant must:

- be over 18 years of age (15 years of age for an attendant with conditions included until they attain the age of 18 years);
- complete an application form; and
- provide a certified copy of a driver’s licence, passport or birth certificate.<sup>229</sup>

23.39 All GRNSW licence types last for a period of two years and are renewed biennially in June. The licence lapses if not renewed within 12 months of expiration. The current licence period is 1 July 2015 to 30 June 2017.

## Licence types

### Owner

23.40 An Owner is a person “who has a legal or equitable interest in a greyhound, including a lessee with the interest being registered/recorded with the Controlling Body”.<sup>230</sup>

23.41 Records that GRNSW produced to the Commission suggest that, in FY15, there were 21,715 greyhound Owners registered in NSW. However, this figure may be doubted, and was subject to a qualification when GRNSW provided it.<sup>231</sup> GA provides quite different figures.

23.42 GA obtains information from controlling bodies and has published licensing/registration information about public trainer, owner-trainer and attendant numbers for each year between 2009 and 2015.<sup>232</sup> The figures GA has published about GRNSW are the same figures that GRNSW has published in its annual reports for those years.

23.43 GA has also published records identifying that, in NSW, there were 5,952 Owners registered with GRNSW in FY15 and 7,623 in FY14. The Commission accepts the figures published by GA.

<sup>229</sup> GRNSW website, “Overview”: <<http://www.grnsw.com.au/forms-1>> (accessed 16 May 2016).

<sup>230</sup> The Rules R1; see also overview of Ownership requirements and application form Application to Register as an Owner: GRNSW website, “Types of Ownership”: <<http://www.grnsw.com.au/licensing/owner/types-of-ownership>> (accessed 16 May 2016).

<sup>231</sup> GRNSW noted that persons who are registered participants may also hold one or more licences, potentially affecting the information they produced.

<sup>232</sup> GA website, “Australasian Statistics”: <<http://www.galtd.org.au/industry/australasian-statistics>> (accessed 29 May 2016).

23.44 As at May 2016, GRNSW does not require payment of any application fee for registration as an Owner.

23.45 At least historically, GRNSW regarded it as important to be able to record who owned a particular dog. However, mere ownership, without other involvement in the industry – such as being an Owner-Trainer – was regarded by GRNSW as less significant, from a registration or licensing perspective, than other categories of industry participation. In oral evidence to the Commission, Mr Brent Hogan, Chief Executive of GRNSW from 2009 to February 2015, speaking of the position in 2010, said:

Owners, strictly owners were not a license type either. That had been removed by the Greyhound and Harness Racing Regulatory Authority. So if all your activity was that of owning the animal and somebody else trained the animal, a licensed trainer, you were no longer a licensed person. You were obviously in our system as a person because we need to know who owns the animal, but from a licensing perspective the licensing of owners stopped sometime in the life of the GHRRA.<sup>233</sup>

### **Owner-Trainer**

23.46 GRNSW issues two types of trainer licences, namely an Owner-Trainer Licence and a Public Trainer Licence. An Owner-Trainer Licence allows a person to train and race greyhounds which the person either owns outright or part owns. A Public Trainer Licence allows a person to train and race his or her own greyhounds, as well as greyhounds for any member of the public. Owner-Trainers may apply to upgrade to a full Public Trainer Licence only after holding an Owner-Trainer licence for 12 months or longer.<sup>234</sup>

23.47 Before applying for an Owner-Trainer Licence, a person must:

- retain all or part ownership of the greyhounds they train;
- have had suitable kennels built (or request approval to be allowed to train out of the property of another NSW licensed person);
- undertake a National Criminal History Check; and
- when applying, provide the name of a referee, being a person who has been registered as a trainer for more than two years.<sup>235</sup>

23.48 As at May 2016, the fee imposed by GRNSW for an Owner-Trainer Licence was \$75.00.<sup>236</sup>

23.49 In FY15 there were 1,846 Owner-Trainers licensed in NSW.<sup>237</sup>

### **Public Trainer**

23.50 As noted, a person licensed with GRNSW as a Public Trainer may train and race their own greyhounds, as well as greyhounds owned by other members of the public.<sup>238</sup>

23.51 Before applying for a Public Trainer Licence, a person must:

- have held an Owner-Trainer Licence for at least 12 months (with relevant criteria considered in support of the upgrade including the number of greyhounds in the person's kennel, the

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<sup>233</sup> 1 October 2015: T329.14-19.

<sup>234</sup> GRNSW website, "Types of Trainer": <<http://www.grnsw.com.au/licensing/trainer/types-of-trainer>> (accessed 16 May 2016).

<sup>235</sup> Ibid; GRNSW Training Code.

<sup>236</sup> GRNSW website, "GRNSW Fees": <<http://www.grnsw.com.au/licensing/fees/grnsw-schedule>> (accessed 16 May 2016).

<sup>237</sup> GRNSW Annual Report 2015, p. 25. See also GA website, "Australasian Statistics":

<<http://www.galtd.org.au/industry/australasian-statistics>> (accessed 17 May 2016).

<sup>238</sup> GRNSW website, "Types of Trainer": <<http://www.grnsw.com.au/licensing/trainer/types-of-trainer>> (accessed 16 May 2016).

number of starters over the past two years and the success rate of those starters, as well as any references in support of the application and any breaches of the Rules);

- have had suitable kennels built (or request to be allowed to train out of the property of another NSW licensed person);
- pass a kennel inspection;
- undertake a National Criminal History Check; and
- when applying, provide the names of two referees, one being a person registered as a Trainer for more than two years and the other who is a 'business person' with whom they have regular financial transactions (eg. a veterinarian, food supplier or accountant).<sup>239</sup>

23.52 As at May 2016, the fee imposed by GRNSW for a Public Trainer Licence was \$135.00.<sup>240</sup>

23.53 In FY15 there were 1,470 Public Trainers licensed in NSW.<sup>241</sup>

### **Attendant**

23.54 An Attendant is a person "registered by the Controlling Body other than a registered owner or trainer who is authorised to physically be in charge of a greyhound whilst such greyhound is on the premises of a club for racing".<sup>242</sup>

23.55 The Attendant Licence effectively allows a person to handle, box, catch and generally assist a trainer at a track on race days. The minimum age for an Attendant Licence is 15 years of age. Until 18 years of age, an Attendant can work only for a licensed family member.<sup>243</sup>

23.56 Before applying for an Attendant Licence, a person must:

- if under 18 years of age, provide a written reference from their parent/s or guardian supporting the application;
- if over 18 years of age, undertake a National Criminal History Check; and
- provide the name of a referee, being a person licenced by GRNSW for more than two years.<sup>244</sup>

23.57 As at May 2016, the fee imposed by GRNSW for an Attendant Licence was \$40.00.<sup>245</sup>

23.58 In FY15 there were 1,098 greyhound Attendants licensed in NSW.<sup>246</sup>

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<sup>239</sup> Ibid.

<sup>240</sup> GRNSW website, "GRNSW Fees": <<http://www.grnsw.com.au/licensing/fees/grnsw-schedule>> (accessed 16 May 2016).

<sup>241</sup> GRNSW Annual Report 2015, p. 25. See also GA website, "Australasian Statistics": <<http://www.galtd.org.au/industry/australasian-statistics>> (accessed 17 May 2016).

<sup>242</sup> The Rules R 1.

<sup>243</sup> GRNSW website, "Attendant Application": <<http://www.grnsw.com.au/forms/trainer-and-attendant/attendant-application>> (accessed 13 May 2016).

<sup>244</sup> GRNSW website, "Attendant Application": <<http://www.grnsw.com.au/forms/trainer-and-attendant/attendant-application>> (accessed 13 May 2016).

<sup>245</sup> GRNSW website, "GRNSW Fees": <<http://www.grnsw.com.au/licensing/fees/grnsw-schedule>> (accessed 16 May 2016).

<sup>246</sup> GRNSW Annual Report 2015, p. 25. See also GA website, "Australasian Statistics": <<http://www.galtd.org.au/industry/australasian-statistics>> (accessed 17 May 2016).

## Registration of Studmasters and Trial Track Managers

### *Studmaster*

- 23.59 Local Rule 125 defines a Studmaster as “a person registered by the Controlling Body [GRNSW] who has the care, control or custody of a sire”.
- 23.60 On its website, GRNSW states that in order to breed in NSW, each sire involved in breeding must have a Studmaster. The Studmaster is the person who will be held responsible for supervising the mating activities and completing relevant paperwork. If the owner of a sire wishes to breed, then they need to apply to GRNSW to become a Studmaster by completing the appropriate form. GRNSW further states that if someone other than the owner of the sire wishes to breed with the sire, they still need to apply to GRNSW to become a Studmaster and, in addition, a “Breeding Lease – Sire/Breeders Authority” would need to be completed.<sup>247</sup>
- 23.61 GRNSW publishes an application form for a “Studmaster Licence”. The applicant is required to provide a National Criminal History Record Check and a reference from a veterinarian.
- 23.62 As at May 2016, the fee imposed by GRNSW for a Studmaster licence was \$130.00.<sup>248</sup>

### *Trial Track Manager and Assistant Manager*

- 23.63 Greyhound trial tracks in NSW must be registered in accordance with s. 17(1)(b) of the Act and LRs 150 and 150B. Section 3(1) of the Act defines a “greyhound trial track” as meaning:
- ... land (not being a racecourse licensed under the *Racing Administration Act 1998* for greyhound racing meetings) that is held out by any person having the management or control of the land, whether as owner, lessee, occupier or otherwise, as being available for the purpose of enabling greyhounds, other than those owned by, or leased to, that person, to compete in trials or be trained in racing.
- 23.64 Local Rule 150F provides that Trial Track Managers and Assistant Managers must be registered. Specifically, LR 150F(1) provides that a person must not take any part in the management or control of a greyhound trial track unless the person is registered with GRNSW as the Trial Track Manager or an Assistant Manager of the track and has paid all fees payable under the Rules in connection with that registration.
- 23.65 LR 150A relevantly defines “manager” as meaning the person registered with GRNSW as having the management or control of a greyhound trial track and includes a person that GRNSW approves as acting manager of a track during any leave of absence that GRNSW grants to the manager.
- 23.66 Local Rule 150F(4) provides that an applicant for registration as a Manager or Assistant Manager must supply such evidence of character, fitness and experience as GRNSW may require.
- 23.67 As at May 2016, the fee imposed by GRNSW for a Trial Track Manager licence was \$33.00. The fee for a Trial Track Assistant Manager licence was \$17.00.<sup>249</sup>

## Registration of breeders

- 23.68 Regulation of greyhound breeding, including through imposing controls and limits on the licensing of persons as breeders, is directly relevant to welfare considerations in respect of

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<sup>247</sup> GRNSW website, “Studmaster Application”: <<http://www.grnsw.com.au/forms/breeding/application-for-studmaster>> (accessed 16 May 2016).

<sup>248</sup> GRNSW website, “GRNSW Fees”: <<http://www.grnsw.com.au/licensing/fees/grnsw-schedule>> (accessed 16 May 2016).

<sup>249</sup> Ibid.

greyhounds. These aspects are discussed in detail in Chapters 9 and 11. In addition, the GRNSW Code of Practice for Breeding Rearing and Education (“the GRNSW Breeding Code”), issued by GRNSW on 19 June 2015 (with a stated commencement date of 1 December 2015), is described in Chapters 9 and 11. The difficulties in imposing or encouraging cultural change to breeding practices are discussed in Chapter 12.

- 23.69 Until as recently as 1 July 2015, there was no greyhound Breeder’s Licence issued by GRNSW. In addition, any person who was licensed or registered with GRNSW as an Owner or Trainer was permitted to breed greyhounds.

### Delay in introduction of Breeder’s Licence

- 23.70 The need for regulation of breeding had, however, been squarely before GRNSW as an issue needing to be addressed at least as far back as 2010.

- 23.71 As noted in previous chapters, following the conclusion of a number of industry forums on its “Project Welfare” initiative in March 2010, GRNSW management prepared a document recording its findings regarding GRNSW’s consultations with industry – the “Project Welfare Consultation Findings” (“Project Welfare Findings”).<sup>250</sup>

- 23.72 GRNSW’s Project Welfare Findings noted that breeders and rearing establishments were “currently unregulated” and identified licensing and registration of breeders, rearers and educators as one of the eleven key areas considered “critical in the development of an ongoing welfare policy”. The Project Welfare Findings stated that: “Persons seeking to breed should be licensed as breeder”.<sup>251</sup> The document also recommended that a responsible breeding code be developed to monitor excessive wastage through poor breeding practices.<sup>252</sup>

- 23.73 In its Annual Report 2010, GRNSW reported:

In January 2010, GRNSW commenced the development of Project Welfare as the first step in the implementation of a long-term policy aimed at driving welfare improvement and cultural change within the sport.

... A number of key issues and areas were identified during Project Welfare consultations, and stakeholder feedback provided the basis of the welfare strategies outlined in GRNSW’s strategic plan Chasing 2020. As part of the ongoing implementation of the plan, GRNSW will develop policies and practices in the following areas to achieve best practice standards in greyhound welfare:

- Improve licensing and regulation of breeders, trainers and rearing establishments; ...<sup>253</sup>

- 23.74 In terms of GRNSW’s movement towards licensing of breeders, nothing of any real substance appears to have happened between late 2010 and mid-2015. There is no good reason why GRNSW could not have introduced a Breeder’s Licence much earlier than in mid-2015. This is particularly the case given that licensing and regulation of breeding had been identified as a key welfare issue by at least mid-2010. Indeed, when finally introducing a Breeder’s Licence in July 2015, GRNSW said it was “adopting the same protocols that have been in place in other jurisdictions for many years”.<sup>254</sup>

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<sup>250</sup> Ex E (28 September – 2 October 2015).

<sup>251</sup> Ibid, p. 5.

<sup>252</sup> Ibid, pp. 8-9.

<sup>253</sup> Ex G (28 September – 2 October 2015), p. 10.

<sup>254</sup> GRNSW website, “Breeders – FAQs”: <<http://www.grnsw.com.au/uploads/Breeders%20-%20FAQs%2018%20June%202015.pdf>> (accessed 25 May 2016).

## Introduction of Breeder's Licence: 2015

23.75 On 1 July 2015, GRNSW amended the Rules so that, from that date, any person whelping a litter in NSW must have a Breeder's Licence issued by GRNSW.

23.76 GRNSW amended LR 125 to include a requirement for "Registration of Breeders" as follows:

- (1) A person must be registered as a breeder by GRNSW to undertake any of the following activities:
  - a) arrange for the service or artificial insemination of a dam;
  - b) care for a dam whelping a litter of pups;
  - c) care for an unnamed greyhound including times the greyhound is being whelped and reared.
- (2) A person must not:
  - a) leave a dam whelping a litter of pups in the care of a person that is not a registered breeder; or
  - b) leave an unnamed greyhound for the purposes of whelping or rearing in the care of a person who is not a registered breeder.
- (3) A registered breeder must comply with the GRNSW Code of Practice for Breeding, Rearing and Education.
- (4) A person who contravenes LR (1), (2) or (3) is guilty of an offence.

23.77 During the March to June 2015 licence renewal period, GRNSW issued a Breeder's Licence to any person who had bred a litter of pups in the two years prior to 1 July 2015 and who was over 18 years of age. Those participants were required to:

- complete the relevant section of their licence renewal form;
- successfully complete the Breeders Education Pack questionnaire prior to their breeder's licence being issued; and
- undertake a kennel inspection which met the requirements of the GRNSW Breeding Code.

23.78 Those participants who had not yet bred a litter (or had bred a litter prior to 1 July 2013) and who intended to breed a litter after 1 July 2015 were required to apply to GRNSW for a Breeder's Licence. These participants, and all first time applicants, were required to:

- successfully complete the Breeder's Education Package;
- undertake a National Criminal History Record Check (if not provided within the previous two years);
- provide a certified copy of a driver's licence, passport or birth certificate (if not provided within the previous two years);
- undertake a kennel inspection which meets the requirements of GRNSW Breeding Code; and
- when applying, provide the names of two referees, one of whom has been registered as a trainer for more than two years and another who is a 'business person' with whom they have regular financial transactions with (eg. veterinarian, food supplier or accountant).

23.79 To date, GRNSW has not imposed any fee for a Breeder's Licence.

23.80 GRNSW has indicated that it will introduce a fee in 2016 “to offset costs of administration and promote considered breeding decisions”.<sup>255</sup> The amount of such fee is not yet known. The extent to which any such fee would be likely to promote considered breeding decisions is considered in Chapter 11 dealing with the breeding aspects of wastage.

23.81 In FY15 there were 1,270 greyhound breeders registered in NSW.<sup>256</sup>

## Whelpers, rearers and educators

23.82 There are currently no dedicated licences – as opposed to mere registration – specifically directed to those people who whelp, rear or educate (“breakers”) greyhounds.<sup>257</sup> This is notwithstanding that the actions of such persons have the capacity to impact significantly on the welfare of greyhounds with which they have involvement.

23.83 In respect of educators, the issue is important particularly given the Commission’s findings that numerous instances of live baiting occurred in breaking-in establishments operated by particular educators. From a regulatory perspective, it is imperative that GRNSW clearly possesses, and exercises, a power to require educators to be registered with, and licensed by, GRNSW, and that GRNSW is empowered to inspect premises (breaking-in establishments) owned or managed by an educator. Significant doubts arise, however, regarding these aspects.

23.84 Since at least 2009, GRNSW has not regulated or licensed breaking-in establishments. The Joint Working Group (“the JWG”),<sup>258</sup> in its final report to GRNSW dated 29 January 2016 (“the JWG Report”), stated that “there is currently no registration or licensing for those responsible for breaking-in and education”.<sup>259</sup> GRNSW has stated an intention to introduce specific licences for rearers and educators from 1 July 2016. To this end, GRNSW states that it commenced registering persons as rearers and educators on 21 December 2015. Prior to this date, GRNSW did not separately register rearers and educators – although, as will be seen, conceptually at least, such persons might be required to hold a Breeder’s Licence in accordance with LR 125, depending on the activities they undertook.

23.85 The precise basis on which GRNSW presently purports to require educators to be registered – and, in future, licensed – is unclear.

## Whelpers, rearers and educators defined

23.86 A “whelper” is a person engaged to whelp a litter and care and raise the pups until registration of the litter is complete.<sup>260</sup> According to GRNSW, the licensing of whelpers is currently combined within a Breeder’s Licence, but this will be separated from 1 July 2016.<sup>261</sup>

23.87 A “rearer” is a person who cares for a greyhound aged from 8-14 weeks to 14-16 months of age. GRNSW describes a rearer as a person who undertakes to “raise, socialise and commence the

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<sup>255</sup> Ibid.

<sup>256</sup> This has been assessed from information produced by GRNSW in Response to Order 23 dated 15 December 2015. The issues with GRNSW’s records have been discussed above.

<sup>257</sup> Note also that GRNSW similarly does currently issue specific licences for lure drivers or catchers. GRNSW does, however, register lure drivers in accordance with R 53. Pursuant to R 53(3), a club must not appoint a person as a lure driver for a meeting unless GRNSW has approved that person. R 48 refers to a catcher as “a registered person or a person authorised by the [steward who] is in attendance at the catching pen prior to the commencement of the Event for the purpose of catching the greyhound.”

<sup>258</sup> A group established by GRNSW.

<sup>259</sup> JWG, “Implementing Reform in the New South Wales greyhound racing industry – Report to interim Chief Executive of Greyhound Racing NSW from the Joint Working Group”, 29 January 2016 (“the JWG Report”), p. 32.

<sup>260</sup> See, for example, GRNSW, “Table of Proposed Licence Categories and Requirements” (undated).

<sup>261</sup> GRNSW Response to Order 27 dated 19 February 2016, p. 5.

early education of pups for [them]self, or on behalf of an owner, after they have been ear branded, microchipped and vaccinated”.<sup>262</sup>

- 23.88 An “educator” (or “breaker” or “primary educator”) is a person who cares for a greyhound between 14-18 months of age. An educator/breaker is a person who “teaches a greyhound skills to compete in a race and familiarises it with the racetrack environment before it can move to pre-training or training”.<sup>263</sup>

### **Whelpers and rearers – Breeder’s Licence**

- 23.89 As noted, GRNSW introduced, with effect from 1 July 2015, new rules requiring, for the first time, breeders to be licensed in NSW. The rules are aimed at ensuring persons meet certain minimum requirements before breeding greyhounds.

- 23.90 Local Rule 125(1) relevantly provides that persons who undertake any of the following activities must be registered as a breeder with GRNSW:

- caring for a dam whelping a litter of pups (LR125(1)(b)); and
- caring for an unnamed greyhound including times the greyhound is being whelped and reared (LR125(1)(c)).

- 23.91 The language of LR 125(1)(c) – “caring for [a greyhound when it] is being whelped and reared” – is apt to include persons who are whelpers or rearers. Accordingly, from 1 July 2015 such persons were required to be registered with GRNSW as breeders in accordance with LR 125(1).

### **Are educators/breakers caught by LR 125 and/or the GRNSW Breeding Code?**

- 23.92 The position is less clear in respect of an educator/breaker. Pursuant to LR 125(1)(c), an educator may be required to obtain registration as a breeder with GRNSW but only in so far as the person may undertake activities involving “care for an unnamed greyhound”. However, an educator may deal with greyhounds that are named. A person engaged in such activity is not within the ambit of LR 125 and is not, on that basis, required to be registered with, or licensed by, GRNSW.

- 23.93 At least on one view, the GRNSW Breeding Code – introduced with effect from 1 July 2015 – does not take matters much further. Clause 1.4 refers to a “Manager” as “the person being in charge of a breeding, rearing or education premises.” Clause 1.5 provides that “A Manager must be licensed in accordance with the GRNSW Greyhound Racing Rules to breed, rear or educate a greyhound.” However, the reference to the Rules in cl. 1.5 is unclear, since the Rules do not squarely require an educator (or the Manger of an education premises) to be licensed. In this respect, as noted, LR 125(1) imposes an obligation on certain persons to be registered, as a breeder, but, for example, would not extend to a person who educates (cares for) named greyhounds.

### **Are educators/beakers caught by the Rules relating to trainers?**

- 23.94 At least by reference to the language used in the Rules, an educator might fall within the definition of a trainer.

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<sup>262</sup> GRNSW website, “Licensing: Rearer and Educator: Information”: <<http://www.grnsw.com.au/licensing/rearer-and-educator/information>> (accessed 17 May 2016).

<sup>263</sup> Ibid.

- 23.95 Rule 1 defines a “trainer” as meaning “a person registered by [GRNSW] to train a greyhound for a purpose pursuant to these Rules.” Rule 1 further defines “train” or “training” as meaning “the preparation, **education** or exercise of a greyhound to race or trial.” (Emphasis added)
- 23.96 As noted above, cl. 1.5 of the GRNSW Training Code (June 2015 version onwards) provides that a trainer must be licensed in accordance with the Rules to train a greyhound. Clause 1.4 adopts the same definitions of “trainer” and “train” or “training” as contained in R 1. As with the GRNSW Breeding Code, the reference back to “licensed in accordance with the Rules” is, at the very least, ambiguous in circumstances where the Rules do not squarely address that matter.

### **GRNSW are not purporting to register or licence educators as “trainers”**

- 23.97 As will be seen, however, GRNSW are not purporting to register or licence educators as being, in effect, trainers under the Rules. Rather, GRNSW is purporting to register and, in future, licence educators in conjunction with the Rules and the GRNSW Breeding Code. This is evident from the GRNSW Breeding Code which, as its name suggests, addresses itself in part to the role played by a person in charge of education premises.<sup>264</sup> In addition, the “Background” to the GRNSW Training Code states:

Participants involved in the breeding, rearing or **education** of greyhounds should refer to the Code of Practice for the Breeding, Rearing and Education of greyhounds.<sup>265</sup> (Emphasis added)

- 23.98 It is, to say the least, wholly unsatisfactory that the Rules and provisions relating to educators contain uncertainty. It is at least arguable that, on the current drafting of the Rules and codes, GRNSW does not possess a power to licence educators in the manner proposed. It is undesirable that there be any uncertainty about that matter. The Commission is of the view that the Rules should be amended to ensure this is so.
- 23.99 The matter is of more than academic interest. If, on its proper construction, the Rules and licensing scheme do not require particular persons to be registered, and such persons are in fact not registered or licensed, it can be very difficult to establish a relevant breach of the Rules by them. In addition, the fact that a person is unlicensed or unregistered means that GRNSW will not be able to adopt various investigative measures, such as using a power to enter and inspect premises “occupied by or under the control of a registered person”.<sup>266</sup> As GRNSW’s former General Manager of Education and Welfare, Mr Anthony O’Mara, told the Commission, it is “very difficult to prosecute someone under the Rules of Racing for [a] person who’s not licensed.”<sup>267</sup>

### **Recent steps taken by GRNSW to register and, in future, licence rearers and educators**

- 23.100 In anticipation of the introduction of a national licensing scheme in July 2016 or later (discussed below), on 21 December 2015, GRNSW introduced new *registration* categories for rearers and educators. Previously, GRNSW did not require such persons to be registered or licensed in NSW and, as such, there was no dedicated registration or licence category for rearers or educators.
- 23.101 On 19 February 2016, GRNSW informed the Commission that transitioning to registration of specific licensing for rearers and educators commenced on 21 December 2015 and that:

<sup>264</sup> GRNSW website, “Fact Sheet – GRNSW Licensing Breeders “: <<http://www.thedogs.com.au/Uploads/150617%20Fact%20Sheet%20-%20GRNSW%20Licensing%20Breeders.pdf>> (accessed 17 May 2016).

<sup>265</sup> GRNSW Training Code: Ex B (17-19 November 2015), p. 1.

<sup>266</sup> The Rules LR 18.

<sup>267</sup> 17 February 2016: T821.1-2.

Participants will be provided with the details of the requirements to hold each licence type. They will be able to confirm their intention to be licensed under the relevant categories from 1 July 2016 and will be provided with a transitional licence. This will be managed over 24 months to ensure that the requirements are met, including a requirement for participants to demonstrate reasonable progress towards meeting the new licensing requirements at 12 months. At the expiration of the transitional licence period, participants must apply for a full licence. A full licence will only be granted if all relevant requirements for this licence have been met.<sup>268</sup>

- 23.102 GRNSW states that, following the commencement of registration on 21 December 2015, there were 709 rearers and 435 educators registered with GRNSW as at 19 February 2016.<sup>269</sup>
- 23.103 GRNSW has further stated that any rearers or educators who are not currently registered or licensed with GRNSW will be prompted to contact GRNSW to register themselves.<sup>270</sup>
- 23.104 As outlined above, it is unclear as to under what power GRNSW is requiring persons to be registered as educators.

### Breaking-in establishments

- 23.105 As noted in Chapter 3, many of the participants involved in the practice of ‘live baiting’ – including as depicted on the *Four Corners program* – did so at ‘breaking-in’ or ‘pre-training’ establishments.
- 23.106 In addition to the uncertainties regarding the position of educators, it is a significant deficiency in the current licensing system that breaking-in establishments are not required to be registered with GRNSW. This is particularly so given that, as the evidence before the Commission revealed, by at least 2009, GRNSW had identified the need to introduce regulation of breaking-in establishments. The topic was one of the matters the subject of a Power Point presentation that GRNSW management delivered to RSPCA NSW officials on 4 September 2009.
- 23.107 The former GRNSW Chief Steward, Mr Clint Bentley, gave evidence to the Commission that, in 2010, GRNSW was concerned about greyhound welfare and racing, and the regulation of breaking-in establishments, and that some persons that operated breaking-in facilities who were not training greyhounds, and were not otherwise required to hold a licence, could operate them without regulation.<sup>271</sup>
- 23.108 These concerns remained present in July 2014. In an email sent to then Chief Executive, Mr Brent Hogan, and the “Leadership Group”, Mr O’Mara said:
- The major issue identified by GRNSW and GRV field officers is the current level of non-compliance of education facility, breakers. This is further compounded by a declining number of operators.<sup>272</sup>
- 23.109 Mr O’Mara gave evidence to the Commission that in July 2014:
- The people that were being paid to break-in the animals or prepare the dogs for racing weren't licensed, were operating outside the licensing regime. Many weren't trainers.<sup>273</sup>
- 23.110 Mr O’Mara said the reason why such persons – breakers/educators – (and their premises) were unlicensed was because of an intention to move forward with a national licensing scheme rather than have one State going alone.<sup>274</sup>

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<sup>268</sup> GRNSW Response to Order 27 dated 19 February 2016, p. 5.

<sup>269</sup> Ibid.

<sup>270</sup> GRNSW website, “Licensing: Rearer and Educator: Information”: <<http://www.grnsw.com.au/licensing/rearer-and-educator/information>> (accessed 29 May 2016).

<sup>271</sup> 18 February 2016, T860.18-26.

<sup>272</sup> 17 February 2016, T823.23-25.

<sup>273</sup> Ibid, T823.28-31.

23.111 The Commission also heard evidence from Mr Hogan to the effect that nothing had been done concerning the regulation of breaking-in establishments in the five and a half years between 2010, when it was brought to the GRNSW Board's attention, and February 2015 when the Board was disbanded. Mr Hogan gave the following evidence:

Q. That didn't occur during your tenure, did it, the regulation of breaking-in establishments?

A. That was part of the national greyhound welfare strategy that we led in 2013-14.

...

Q. Mr Hogan, it is still the case, is it not, that those who operate breaking-in establishments don't have to be licensed?

A. That's correct.

...

A. Primarily driven by the issue of systems. We were then moving into a system development phase. So first priority was making sure that the systems would support the current activities of GRNSW, so that meant the licensing system, stability issues. We needed that system rebuilt. We needed a grading system that was stable and we could rely on coming in in the morning that it would work, and we needed a system that was agile enough that we could then build these modules in as OzChase development had planned to do and has done over that period of time. What we quickly learnt is that addressing those deficiencies from a systems perspective was not going to be an overnight activity.

COMMISSIONER:

Q. But five and a half years is hardly an overnight activity. I mean to this day apparently breaking-in establishments are not licensed. Why wasn't anything done in five and a half years about it, given that GRNSW identified it as an issue as long ago as 4 September 2009? Have you got any answer to that?

A. Not beyond the issue of a sequential approach to systems development.<sup>275</sup>

23.112 The JWG stated that the current gaps in the licensing system in NSW, in so far as it concerns persons responsible for breaking-in and education, will be addressed by GRNSW's implementation of the Greyhounds Australasia Greyhound Welfare Strategy ("the NGWS").<sup>276</sup> As noted above, in anticipation of the proposed 'national' strategy being implemented in NSW, from December 2015 GRNSW has encouraged educators to register with GRNSW, and some have done so.

23.113 The NGWS includes proposals that aim to capture establishments currently not licensed or inspected by GRNSW. These initiatives include registration, inspection and star rating of all rearing properties, breaking-in facilities and pre-training establishments. They are said to be part of the "Year Three Initiatives", which would not see them being registered until at least 2017,<sup>277</sup> even assuming the strategy is otherwise implemented without undue delays or impediments.

23.114 Like breaking-in establishments, to date rearing farms have not been required to be registered with GRNSW. Rearing farms are a potential source of wastage of greyhounds and should be subject to regulation, including in order to enable the detection of particular animal welfare concerns arising.

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<sup>274</sup> Ibid, T823.43-44.

<sup>275</sup> 1 October 2015, T312.15-313.13.

<sup>276</sup> JWG Report, p. 32.

<sup>277</sup> GRNSW Response to Order 1 dated 15 May 2015, p. 14.

## Uniform approach to registration in Australia

23.115 Steps have been taken towards a uniform approach to registration of industry participants in Australia. Such uniformity has not yet been achieved and the timing, and likelihood, of its introduction remains uncertain.

### Proposed uniform approach to registration

23.116 In February 2014, GRNSW and GRV issued a “Joint GRV/GRNSW Animal Welfare Strategy” (“the JWS”) in which they stated that:

Uniform standards of care, education, accountability and enforcement are required across the country to ensure the best possible outcome for greyhounds at every stage of their lifecycle.<sup>278</sup>

23.117 The JWS was a precursor to the NGWS that GA (and its member bodies) adopted in May 2014.<sup>279</sup> The NGWS adopted key aspects of the JWS. The NGWS set out a number of proposed goals or aspirations, including that the industry should:

- Move towards all greyhounds having to be under the care of a Registered Participant at all times during their lifecycle, unless retired as a pet

...

- Introduce a national approach to breeding to further reduce the number of unsuitable greyhounds being bred, and to ensure the decision to breed a litter of greyhounds is a considered one

...

- Registration and Licensing [of people, including]
  - [Moving] towards all people that care for greyhounds at any stage of the lifecycle (until retirement) being registered with peak bodies;
  - [Introducing] a tiered system of trainer licence types which stipulate how many greyhounds trainers are able to train; and
  - Ongoing licensing by peak bodies to be subject to inspection and compliance with maintenance of facility standards.<sup>280</sup>

23.118 It is apparent, however, that to a significant extent, the licensing aspirations in the NGWS have not been met.

23.119 GRNSW has previously foreshadowed that a national licensing scheme will be introduced in July 2016.

23.120 On 19 February 2016, GRNSW sounded a note of significant caution regarding the proposed national licensing system, noting that it is unable to confirm whether a national licensing framework might be adopted by all States in July 2016, with inherent difficulties arising from the

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<sup>278</sup> GRNSW and GRV, *Joint GRV/GRNSW Welfare Strategy*, February 2014, p. 1. See also GRV website, “Landmark Joint Animal Welfare Strategy Adopted”: <<http://www.grv.org.au/news/2014/02/05/landmark-joint-animal-welfare-strategy-adopted/>> (accessed 17 May 2016).

<sup>279</sup> GA, *Greyhounds Australasia National Greyhound Welfare Strategy*, May 2014 (“National Welfare Strategy”). See also GA website, “GA endorses National Welfare Strategy”: <<http://www.galtd.org.au/news-article/ga-endorses-national-welfare-strategy>> (accessed 17 May 2016).

<sup>280</sup> National Welfare Strategy, pp. 1-4.

“desire to achieve a nationally coherent licensing framework across what is a State regulated activity.”<sup>281</sup>

## Proposed National Tiered Licensing Scheme

- 23.121 As noted above, licensing changes are part of the NGWS that GA announced in May 2014.
- 23.122 As a part of this strategy, the GA’s Welfare Working Party is developing what is referred to as a “National Tiered Licensing Scheme”. The scheme is scheduled to commence on 1 July 2016. GRNSW has stated:

The new tiered licensing scheme will ensure that persons who care for greyhounds at any stage of the lifecycle are registered and participants are assessed on core educational competencies before obtaining relevant licenses.<sup>282</sup>

- 23.123 GRNSW has also stated:

... licence requirements will be linked to an education and assessment framework for each licence and aim to professionalise greyhound lifecycle governance.<sup>283</sup>

- 23.124 In its Annual Report 2015, released in November 2015, GRNSW stated that it:

... has been working with other controlling bodies to develop a comprehensive tiered licensing scheme tied to mandatory education which is the next significant deliverable under the NGWS. To be introduced in 2016, the new tiered licensing scheme will ensure that persons who care for greyhounds at any stage of the lifecycle are registered and participants are assessed on core educational competencies before obtaining relevant licences. As part of this licensing and registration scheme, new policies and rules will also set out the education units that must be completed for a person to be eligible to hold a particular type of licence. GRNSW will continue to work closely with the Welfare Working Party which consists of state representatives to further progress initiatives under the NGWS.<sup>284</sup>

- 23.125 On 11 January 2016, GRNSW provided the following further details to the Commission on the tiered licensing scheme in its Final Response to the Commission’s Issues Paper on Overbreeding and Wastage:

... there will be tiered licences for trainers and breeders. Breeding licences will be categorised as B1, B2 or B3 licences, with tiered restrictions on breeding numbers permitted based on experience and educational attainment. GRNSW will also consider tiered licence fee structures in accordance with licence category and quota allowance.<sup>285</sup>

- 23.126 The JWG Report noted that, for trainers licences, the national proposals under consideration involved:

Three tiered licensing based on previous performance (wastage metrics), T3 (entry level) trainers limited to 3 greyhounds in training, T2 up to 10 in training, T1 unlimited. Licence fee would also be tiered, based on monitoring costs.<sup>286</sup>

- 23.127 While GRNSW has indicated that, in the absence of adoption of a national licensing framework, it would take “unilateral action where appropriate”,<sup>287</sup> it presently remains unclear if and when a system of tiered licences, for at least trainers and breeders, will be introduced in NSW.

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<sup>281</sup> GRNSW Response to Order 27 dated 19 February 2016, p. 1.

<sup>282</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [565].

<sup>283</sup> GRNSW, Interim Response 20 to Breeding Issues Paper dated 23 November 2015, [32].

<sup>284</sup> GRNSW Annual Report 2015, p. 13.

<sup>285</sup> GRNSW, Final Response 20A to Breeding Issues Paper dated 11 January 2016, [104].

<sup>286</sup> JWG Report, p. 36.

<sup>287</sup> GRNSW Response to Order 27 dated 19 February 2016, p. 1.

## GRNSW’s Joint Working Group – single licence across the greyhound lifecycle

23.128 In the JWG Report, the JWG advised GRNSW that:

... there is a need to introduce minimum standards for greyhound participants to accompany the licensing across the lifecycle. This should be in the form of a single licence, with participants approved for lifecycle stages.<sup>288</sup>

23.129 The JWG considered that there needs to be improved minimum standards for persons involved in the greyhound racing industry. Participants involved with greyhounds at each stage of the lifecycle should possess appropriate educational qualifications. Licensing should also be conditional on participants’ facilities meeting a minimum standard, and on participants meeting performance standards to maintain licensing at the various lifecycle stages.<sup>289</sup>

23.130 The JWG considered that industry participants should be required to meet performance standards to maintain licensing at the various lifecycle stages. The JWG suggested that, for example, the ongoing licensing of a rearer should be based on the success of their greyhounds, measured by the percentage of greyhounds that commence racing and greyhound performance on a socialisation clearance test.<sup>290</sup> The JWG further suggested that the ongoing licensing of owners should be reviewed periodically (eg. every five years), with factors such as irregular rehoming practices (eg. low rehoming ratio and high rate of greyhounds passing away from injury) informing the licence renewal decision.<sup>291</sup>

23.131 The JWG advocated a process embodying a single licence application as follows:

To minimise the regulatory burden of the new licensing regime, the JWG suggests there should be one licence application process, with participants required to apply for licensing of selected lifecycle stages at the same time. This will remove the need for multiple applications, licences and renewals for individual participants.<sup>292</sup>

23.132 The JWG recommended that GRNSW expand the licensing of “greyhound handlers” to cover the entire lifecycle, including:

- introduction of minimum standards, together with the completion of an educational qualification (with exemptions available for recognition of prior learning)
- introduction of a single licensing process for greyhound handlers, with handlers approved only for those components of the lifecycle for which they have applied and been approved
- having licensing tiers – for hobbyists and professionals – with their differential requirements reflecting the different standards required
- periodic licence renewal being subject to appropriate greyhound outcomes.<sup>293</sup>

23.133 The JWG Report is considered further in other Chapters of this Report. GRNSW has not published the JWG Report, but as at May 2016, GRNSW has yet to indicate the extent to which it accepts the JWG’s recommendations.

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<sup>288</sup> JWG Report, p. 4.

<sup>289</sup> Ibid, 32.

<sup>290</sup> Socialisation clearance tests are discussed in Chapter 16 of this Report.

<sup>291</sup> JWG Report, p. 32.

<sup>292</sup> Ibid, p. 33.

<sup>293</sup> Ibid, p. 4.

## Summary of key findings

- 23.134 The Act and the Rules contain provisions relating to the registration and licensing of industry participants. The Act is largely empowering and the Rules are the means by which particular aspects of regulation are addressed.
- 23.135 The Rules are cumbersome and poorly drafted. They are poorly structured and contain inaccuracies in referencing and language. They are not 'user-friendly'. There are also significant deficiencies in the content of the Rules. Aspects of these matters are addressed above. The Rules require a significant overhaul and, in effect, a wholesale re-writing.
- 23.136 The licensing and registration system in NSW is still evolving. There are, however, notable deficiencies in the current system. There are presently no separate licensing requirements for rearers, educators (breakers) and pre-trainers. There may not, in fact, be a power to require educators to be registered at all. Nor are breaking-in establishments and rearing farms the subject of licensing or registration. This is despite GRNSW having identified, by at least 2009, a need for such matters to be the subject of licensing or registration. There appears to be no satisfactory reason as to why GRNSW did not make such matters the subject of licensing or registration by at least about 2010. The fact that there were intended to be moves towards a national strategy of regulation – which has still not been introduced – does not justify continued inaction on the part of GRNSW.
- 23.137 To similar effect, GRNSW did not introduce a Breeder's Licence until June 2015 (with a stated commencement date of 1 December 2015) despite the need for regulation of breeding having been squarely before GRNSW, as an issue needing to be addressed, as far back as 2010.

## Recommendation

58. The Greyhound Racing Rules of Racing should be redrafted or amended to address the inaccuracies and deficiencies in content as identified in this Chapter.

# 24 Stewards: powers and responsibilities

## Powers and functions of stewards

- 24.1 Stewards play an important role in the greyhound racing industry. They are responsible for the conduct of greyhound race meetings and ensuring adherence to the GRNSW Greyhound Racing Rules (“the Rules”) in connection with those meetings. Stewards also have wider responsibility for investigating incidents and potential non-compliance with the Rules, conducting inquiries and imposing penalties where applicable.
- 24.2 The *Greyhound Racing Act 2009* (“the Act”) and the Rules prescribe the powers and functions of stewards.

### The Act

- 24.3 Section 9(2)(a) of the Act provides that the functions of GRNSW include: “to control, supervise and regulate greyhound racing in the State”. Section 10(2)(c) provides that GRNSW has the power to:

[I]nquire into and deal with any matter relating to greyhound racing and to refer any such matter to stewards or others for investigation and report and, without limiting the generality of this power, to inquire at any time into the running of any greyhound on any course or courses, whether or not a report concerning the matter has been made or decision arrived at by any stewards.

- 24.4 Under s. 23 of the Act, GRNSW may make rules with respect to, *inter alia*:
- (a) the appointment of stewards by GRNSW and the functions of those stewards (including functions that do not relate to greyhound racing meetings),<sup>294</sup>
  - (b) conferring on stewards appointed by GRNSW the function of enforcing the Rules,<sup>295</sup> and
  - (c) the extent to which, and the circumstances in which, stewards appointed by GRNSW may exercise their functions to the exclusion of stewards of greyhound racing clubs.<sup>296</sup>

### *Greyhound Racing Integrity Auditor*

- 24.5 Section 26(1)(a)-(c) of the Act provides that the functions of the Greyhound Racing Integrity Auditor include to:
- have primary oversight of those aspects of the functions of GRNSW that relate to stewards, drug testing and control and registration;
  - provide advice to GRNSW on those matters; and
  - receive and investigate complaints in respect of greyhound racing officials in the exercise of their functions.

This aspect is discussed in Chapter 31.

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<sup>294</sup> The Act s. 23(2)(j).

<sup>295</sup> The Act s. 23(2)(k).

<sup>296</sup> The Act s. 23(2)(l). Note also that GRNSW may arrange for a steward appointed by Harness Racing NSW or Racing NSW to perform the functions of a steward of GRNSW: the Act s. 15(3).

24.6 Under s. 3(1) of the Act, a “racing official” includes a steward appointed by GRNSW.

### **Two types of stewards**

24.7 Both the Act<sup>297</sup> and the Rules<sup>298</sup> contemplate the existence of two types of stewards, namely: (i) stewards appointed by GRNSW; (ii) and stewards appointed by a greyhound racing club. Section 23(2)(l) recognises this distinction when providing that GRNSW may make rules with respect to: “the extent to which and the circumstances in which stewards appointed by GRNSW may exercise their functions to the exclusion of stewards of greyhound racing clubs”. The distinction is discussed further below.

## **The Rules**

24.8 The Rules respectively prescribe and confer a range of functions and powers on stewards in the greyhound racing industry.

### **“Steward” defined**

24.9 Rule 1 defines a “Steward” as:

... a person appointed or approved by the Controlling Body to carry out such duties as pursuant to these Rules or as directed by the Controlling Body, the Chief Steward or the Chairman of Stewards. Where more than 1 Steward is to officiate at a meeting or inquiry, the Controlling Body, the Chief Steward or Chairman of Stewards shall nominate 1 to be the Steward in Charge.

The “Controlling Body” is GRNSW. The definition of steward appears to include only stewards appointed or approved by GRNSW, and not those appointed by clubs other than in so far as the latter may also be approved by GRNSW.

### **“Official”**

24.10 Rule 1 defines an “official” to include a person appointed to officiate at a meeting as a “Steward”. In particular, R 1 states that “official” means:

... any person (by whatever name called) appointed to officiate at a meeting as, or to carry out similar duties to, a secretary, Steward, judge, assistant judge, photo finish operator, attendant (kennel, track, weighing or general), starter, assistant starter, lure driver, veterinary surgeon, clerk (prices) or in any other official capacity directly connected with the conduct of a meeting.<sup>299</sup>

24.11 Like s. 23(2)(l) of the Act, LR 20A recognises that there may be stewards who are not GRNSW stewards. Local Rule 20A provides that, if the stewards appointed to act at a race or qualifying trial meeting “are not Controlling Body stewards”, the club holding the meeting must, within three days after the meeting (unless a shorter period is specified) supply to GRNSW:

- (a) a report on any decision made by the stewards in respect of a greyhound which has breached R 69,<sup>300</sup> and
- (b) information relating to decisions of the stewards in respect of the commencement of an inquiry into any matter arising from the conduct of the meeting.

The Rules do not define the term “Controlling Body stewards”.

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<sup>297</sup> The Act s. 23(2)(l).

<sup>298</sup> The Rules LR 20A.

<sup>299</sup> It is unclear whether the definition of “official” in R 1, in so far as including reference to the capitalised term “Steward”, includes a steward appointed by a racing club (eg. for a non-TAB meeting) as distinct from one appointed by GRNSW. The issue is relevant to, among other things, whether a non-GRNSW steward can exercise certain powers under the Rules that are exercisable by an “official”, such as powers to enter and inspect premises pursuant to R 14(2).

<sup>300</sup> R 69 relates to marring.

24.12 Rule 1 further defines the term “officer of the Controlling Body” as meaning a person authorised by GRNSW either generally or in a particular instant to make inquiries, give directions or carry out any activity pursuant to the Rules or by direction of GRNSW, and as including a steward.

***Stewards’ control and regulation of race meetings***

24.13 Rule 20 deals with stewards’ broadly stated powers to control and regulate race meetings. Subject to the Rules, the stewards have the power to control and regulate the race meeting.<sup>301</sup> Without limiting the broad language of the opening words of R 20(3), stewards have, in connection with a race meeting, power to:

- (a) inquire into any matter or thing in connection with a race meeting pursuant to their control;
- (b) require, obtain production of and examine all books, documents and other printed materials relating to a meeting;
- (c) enter all lands, booths, buildings, kennels, stands, enclosures and all other places used for the purpose of a meeting;
- (d) control, regulate, and inquire into the conduct of officials, bookmakers, bookmakers’ clerks, owners, trainers, attendants and other persons participating in or associated with a meeting;
- (e) determine all questions and objections made in reference to a meeting;
- (f) order the examination of a greyhound drawn in a meeting for the purpose of ascertaining its age or identity or for any other purpose;
- (g) require any owner or trainer to satisfy them that he or any greyhound nominated by him is not subject to any disability or restriction or penalty pursuant to these Rules;
- (h) remove at any time during a meeting any official and to appoint a substitute for any such official;
- (i) appoint any official necessary to the proper control, regulation or conduct of a meeting if in their opinion the club has failed or neglected to do so;
- (j) acting on veterinary advice, or the advice of an authorised person, order the withdrawal of a greyhound from a meeting if in their opinion the greyhound is unfit to run;
- (k) extend the starting time for any event [ie. race or qualifying trial] where in their opinion exceptional circumstances make such action necessary or desirable;
- (l) alter the order in which events appear on the original draw for a meeting if in their opinion that action is necessary or desirable for the proper conduct of the meeting;
- (m) use and, if they think fit, accept the results of, any device or method approved by GRNSW or Stewards to assist them in arriving at decisions.;
- (n) expel or exclude a person from a meeting;
- (o) exercise all such powers as may be conferred upon them by the GRNSW;
- (p) refuse permission to any bookmaker or bookmaker’s clerk to operate at a meeting;
- (q) delegate any of their powers pursuant to these Rules to a person officiating at a meeting;
- (r) determine any act, matter or thing that arises but is not provided for by the Rules;
- (s) disqualify from winning any event or being placed in any event, or for any term, any greyhound liable to be disqualified or suspended pursuant to these Rules;
- (t) recommend to GRNSW that a person should be warned off;

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<sup>301</sup> The Rules R 20(2).

- (u) disqualify from winning or being placed in any event a greyhound used in connection with a breach of these Rules; and
- (v) order that, prior to any further nominations being accepted for any greyhound, a veterinary certificate be produced to the satisfaction of the Stewards, stating that at the time of examination, the greyhound is fit to start.

24.14 Pursuant to R 20(4), the stewards may order any greyhound to be withdrawn from an event:

- (a) where they have reason to believe that there has been, or may have been, committed an improper act in relation to such greyhound which may result in the greyhound not competing in the event pursuant to its natural ability unaffected by such act; or
- (b) for any reason which in the opinion of the stewards is in the best interest of greyhound racing.

24.15 Pursuant to R 26, prior to the commencement of kennelling for a meeting (and as often as thereafter may be necessary) the stewards must inspect the racing facilities, track surface and equipment at the meeting, including the kennel building.

24.16 Not later than 45 minutes before the notified starting time of the first event of a meeting or qualifying trial, a greyhound to participate in an event must be presented to the stewards for kennelling.<sup>302</sup> At the time of kennelling, a certificate of registration, or greyhound identity card, must be presented to the stewards.<sup>303</sup> The stewards can refuse to permit a greyhound to participate in an event if not satisfied as to its identity.

24.17 A steward can require that a registered person produce their current registration card for inspection by the steward.<sup>304</sup>

24.18 Local Rule 20 provides that a race meeting is deemed to commence at 9:00am on the day on which the first event is appointed to be run and to conclude at 12:00pm midnight on the day of the last event of the meeting.

24.19 The timing of runners in an event is determined using electronic timing,<sup>305</sup> and 0.07 of a second is deemed to be the equivalent of a one body length of a greyhound.<sup>306</sup> After the judge has decided the finishing positions in an event, the first four greyhounds are identified and the stewards then cause an "All Clear" to be announced.<sup>307</sup>

24.20 Pursuant to the Rules, in specified circumstances the stewards have power to impose a period of suspension in respect of a greyhound or to order that it complete a satisfactory trial before being permitted to race again. For example, under R 69A the stewards can impose a period of suspension where, in the opinion of the stewards, a greyhound fails to pursue the lure with due commitment during an event. Under R 71, where a greyhound fails to perform to the satisfaction of the stewards, the stewards may order that it complete a satisfactory trial before being eligible to compete in a further event.

***Information to be provided by non-GRNSW stewards***

24.21 As noted, pursuant to LR 20A, if the stewards appointed to act at a race or qualifying trial meeting are not GRNSW stewards (ie. are stewards appointed by a racing club – such as may occur at non-TAB meetings), the club holding the meeting must, within three working days (or such earlier time as specified) provide GRNSW with a report on any decision made by the

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<sup>302</sup> The Rules R 31(2).

<sup>303</sup> The Rules R 33(1).

<sup>304</sup> The Rules R 28.

<sup>305</sup> The Rules R 60(2).

<sup>306</sup> The Rules R 60(3).

<sup>307</sup> The Rules R 62.

stewards in respect of a greyhound that has breached R 69 and information relating to decisions of the stewards in respect of the commencement of an inquiry into any matter arising from the conduct of the meeting.

#### ***Stewards' powers to enter and inspect premises***

- 24.22 Rule 18(2) empowers an “officer of the Controlling Body”, which includes a GRNSW steward,<sup>308</sup> to enter land or premises that are owned, occupied or controlled by a licensed person and used in any manner in relation to a licence; to inspect and search the premises; and to take possession of any article for such period as the steward considers necessary.
- 24.23 Under R 18(2), a GRNSW steward, having entered such premises owned, occupied or controlled by a licensed person, is empowered also to inspect and examine any greyhound believed to be registered, take samples from any such greyhound, inspect any track, racing equipment and kennelling arrangements, and inspect any medications, documents and records.
- 24.24 Rule 18(2)(g) makes clear that a steward may enter upon any such premises for any purpose which may reasonably assist in determining whether an offence is being or has been committed, or whether any condition or any licence or registration granted by GRNSW, is being breached.
- 24.25 Rule 18(3) sets out obligations upon a person who is found upon any such premises subject to an inspection under R 18(2). Under R 18(4), a steward is empowered to take possession of specified items identified on the premises for the purposes of any examination to be carried out or proceedings to be undertaken where the steward believes that an offence has been, may have been, or is being committed.

#### ***GRNSW stewards' powers in relation to inquiries***

- 24.26 Stewards are empowered to conduct an inquiry into “any matter concerning greyhound racing that falls within the powers of the Stewards”.<sup>309</sup> In respect of the conduct and determination of an inquiry, stewards are not subject to the control and direction of GRNSW.<sup>310</sup> In practice, the Chief Steward has typically chaired inquiries that have been held.
- 24.27 Stewards may require any registered person, or another person participating in or associated with greyhound racing, to attend and give evidence if, in the opinion of GRNSW or the stewards, the person may have knowledge of any of the matters the subject of an inquiry.<sup>311</sup>
- 24.28 The Rules empower a steward, or GRNSW, to lay a charge against a person (or club) where it appears the person (or club) may have committed a breach of the Rules or an offence under R 86.<sup>312</sup>

#### ***Conduct of stewards' inquiry***

- 24.29 In respect of the conduct of an inquiry, the stewards can regulate their own procedure “and are not bound by formal rules and practices as to evidence”; they may inform themselves as to any matter in such manner as they think fit.<sup>313</sup>
- 24.30 In connection with an inquiry, the Rules empower a steward to:
- (a) adjourn the inquiry from time to time and from place to place;
  - (b) determine that no charge should be laid;

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<sup>308</sup> The Rules R 1.

<sup>309</sup> The Rules R 19(2).

<sup>310</sup> The Rules R 19(2).

<sup>311</sup> The Rules R 90(1).

<sup>312</sup> The Rules R 90(2), R 92(3)(c).

<sup>313</sup> The Rules R 92(1).

- (c) lay a charge;
- (d) dismiss a charge;
- (e) order the refund of any prize money paid; and
- (f) reprimand persons involved in the inquiry.<sup>314</sup>

### ***Mandatory considerations***

24.31 The Rules specify mandatory considerations to which a steward must have regard in respect of an inquiry, namely:

- (a) the character and antecedents of the person charged;
- (b) the nature and circumstances of the breach, in particular the seriousness of the breach and any negligence, recklessness or indifference of the person charged; and
- (c) whether the person denies or admits the charge.<sup>315</sup>

### ***Interim suspensions and related action***

24.32 Pending the outcome of an inquiry, the stewards (or GRNSW) can direct that:

- a greyhound connected with the inquiry not be permitted to compete in or be nominated for any event;
- any greyhound of an owner or trainer involved or connected with the inquiry not be permitted to compete in or be nominated for any event; and/or
- a licence, or other type of authority or permission, be suspended.<sup>316</sup>

### ***Notice of inquiry decision***

24.33 Within three days of a steward making a decision or order that adversely affects any person, GRNSW must arrange to notify that person of the decision or order (unless that person was present when the stewards or GRNSW announced the decision or order).<sup>317</sup>

### ***Penalties that stewards can impose***

24.34 In respect of a person found guilty of an offence under the Rules or a breach of the Rules, a steward (or GRNSW) can impose a penalty comprising:

- (a) a fine not exceeding the maximum amount for any one offence;<sup>318</sup>
- (b) suspension;
- (c) disqualification;
- (d) cancellation or registration; or
- (e) warning off.<sup>319</sup>

24.35 The stewards (or GRNSW) may disqualify or suspend a greyhound owned by a person for the same, or a different, term from that of the person disqualified or suspended.<sup>320</sup>

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<sup>314</sup> The Rules R 92(3).

<sup>315</sup> The Rules R 92(4).

<sup>316</sup> The Rules R 92(5).

<sup>317</sup> The Rules R 93(1).

<sup>318</sup> The Act s.21(1) provides that GRNSW may, in accordance with the Rules, impose fines not exceeding 200 penalty points (ie. \$22,000) on any owner, trainer or bookmaker or other person associated with greyhound racing, or any greyhound racing club, for breach of the Rules.

<sup>319</sup> The Rules R 95(1).

<sup>320</sup> The Rules R 95(2).

24.36 A penalty imposed may be suspended for such time, or on such conditions, as ordered by the stewards or GRNSW.<sup>321</sup>

24.37 Pursuant to R 95(4), the registration with GRNSW of any person who is disqualified or warned off is “automatically cancelled”.

#### ***Breach of rules without conviction recorded***

24.38 In respect of a breach of the Rules, R 98 empowers the stewards (and GRNSW) to:

- (a) decline to record a finding of guilt and impose a penalty in respect of a person, and
- (b) to discharge the person

if the stewards are of the opinion that the charge is proved but that it is inappropriate to inflict any punishment or any more than a nominal punishment.<sup>322</sup>

#### ***Rights of appeal from stewards' decision***

24.39 Subject to exercising any rights of appeal under the Rules and the *Racing Appeals Tribunal Act 1982* (NSW) (“the RATA”), a person who fails to abide by a decision of a steward (or GRNSW) made at an inquiry is guilty of an offence.<sup>323</sup>

24.40 Section 15A of the RATA relevantly provides for a right of appeal, in accordance with the regulations, in respect of:

- a decision of a steward of GRNSW; or
- a decision of a greyhound racing club or a steward of a greyhound racing club.<sup>324</sup>

24.41 Clause 9(1) of the *Racing Appeals Tribunal Regulation 2015* (NSW) provides that an appeal under s. 15A may be brought only in respect of specified decisions, including a decision:

- (a) to disqualify or warn off a person, or
- (b) to cancel the registration of a person, or
- (c) to fine a person an amount of \$200 or more, or
- (d) to disqualify a greyhound, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person, or
- (e) to suspend any licence, right or privilege granted under the rules, or
- (f) to place an endorsement on the registration certificate of a greyhound for marring or failing to pursue the lure, that gives rise to a suspension of the greyhound for a period of more than 4 weeks.

24.42 Appeals to the RAT are discussed further in Chapter 9.

#### ***Restrictions on conduct of stewards and officials***

24.43 Rule 104 sets out various restrictions on the conduct of stewards and officials. Rule 104(1) provides that a person who is, or resides with, an owner, trainer or attendant of a greyhound that is competing at a meeting must not act as an official. As noted, R 1 defines “official” to include any person appointed to officiate at a meeting as, or to carry out similar duties to, a steward.

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<sup>321</sup> The Rules R 95(3).

<sup>322</sup> In contrast to the *Crimes (Sentencing Procedure) Act 1999* (NSW) s. 10(1)(a) and 10(2)(a).

<sup>323</sup> The Rules R 94.

<sup>324</sup> *Racing Appeals Tribunal Act 1982* (NSW) s. 15A(2) provides rights of appeal against a decision of GRNSW.

- 24.44 Rule 104(2) prohibits any GRNSW officer or employee, club official or employee from being involved, directly or indirectly, in grading or box draws for any event if that person, or a person with whom they reside, is an owner, trainer or attendant of a greyhound nominated for the event.
- 24.45 Under R 104(4) the stewards (ie. GRNSW stewards) or GRNSW can require a club to make available, at no cost to GRNSW, suitable persons to act as officials at a meeting.
- 24.46 Under R 104(4) of the Rules, GRNSW or the stewards may require a club to make available “suitable persons to act as officials at a meeting”. This shall come at no cost to GRNSW, and the club shall ensure that such persons:
- (a) undergo such tests as are deemed appropriate in order to determine the suitability of each person to carry out the duties; and
  - (b) carry out the duties required of them.
- If the stewards are of the opinion that an official is incapable of properly performing the official’s duties, they may order some other person to carry out those duties.<sup>325</sup>
- 24.47 Under R 104(6), officials who are officiating at an event in a capacity that may affect the result of the event are prohibited from owning, training or leasing a greyhound in that event; adjudicating on a matter in which the official has any personal involvement; and directly or indirectly engaging in any betting transaction on that event.
- 24.48 Rule 104(7) prohibits a “Steward” (as distinct from an “official”) from owning, leasing or training a greyhound; being directly or indirectly interested in a greyhound business; and adjudicating on a matter in which they have a personal rather than an official involvement. Rule 104(7) appears to be directed at GRNSW stewards and not club stewards.

## Penalty guidelines

- 24.49 Separate from the Rules, in October 2012 GRNSW published “Penalty Guidelines”,<sup>326</sup> in the form of a penalty table, to assist GRNSW stewards in dealing with prohibited substance cases.<sup>327</sup> The penalty table provides guidance on what penalty should be made for certain infringements.
- 24.50 The penalty table places common prohibited substances into five distinct categories, based on their perceived severity. At least in respect of prohibited substances in the lower categories (Category 4 or 5 substances, and some Category 3 substances at the discretion of the stewards), the greyhound trainer in question is given the option of entering an early guilty plea and accepting the penalty offered by GRNSW stewards in accordance with the penalty table, resulting in a 25% reduction in penalty and the matter not being heard at a stewards’ inquiry.
- 24.51 Higher category swab cases,<sup>328</sup> as well as trainers with a poor record for prohibited substances, would continue to be referred straight to a stewards’ inquiry, with no option for an early guilty plea. The regime has some similarities to the disciplinary system established by the National Rugby League.

<sup>325</sup> The Rules R 104(5).

<sup>326</sup> GRNSW Media Release, “GRNSW releases penalty guidelines”: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=3303>> (accessed 25 May); GRNSW website, “GRNSW Penalty Table v1.0 dated 8/10/12”: <<http://www.thedogs.com.au/Uploads/Userfiles/GRNSWPenaltyTable.pdf>> (accessed 27 May 2016); GRNSW website, “Category of Drugs”: <<http://www.thedogs.com.au/Uploads/Userfiles/GRNSWCategoryOfSubstances.pdf>> (accessed 27 May 2016).

<sup>327</sup> See the Rules R79A, R 83. R 84, R85.

<sup>328</sup> EPO, cocaine and amphetamines are each a Category 2 prohibited substance.

24.52 GRNSW has not published penalty guidelines for breaches of the Rules other than in respect of prohibited substances cases. This may be contrasted with the position in Victoria. With effect from 1 July 2014, Greyhound Racing Victoria (“GRV”) published “Animal Welfare Penalty Guidelines” (“the GRV Penalty Guidelines”) to provide guidance for industry participants about penalties for welfare related offences.<sup>329</sup> The GRV Penalty Guidelines are expressly stated as not intended to be mandatory, and regard must be had to the individual circumstances of each case.<sup>330</sup>

24.53 Under the GRV Penalty Guidelines, the guideline for a “Category 5” welfare compromise, described as one leading to the death of more than one greyhound, is:

PENALTY GUIDELINE: Minimum 3 years disqualification as from the date of penalty imposed. In cases involving the breeding of greyhounds – banned from breeding greyhounds for a minimum of 10 years +/- \$2000 fine for each deceased greyhound.<sup>331</sup>

Another example is the guideline for “Live Baiting/Blooding of Greyhounds” offences, which is:

PENALTY GUIDELINE: Disqualification for 10 years from the date of penalty imposed.<sup>332</sup>

## Day-to-day responsibilities of stewards

24.54 In general terms, stewards assist in the control and regulation of racing activities in accordance with the Rules. The particulars of a GRNSW steward’s day-to-day duties can be separated into three broad situational categories:

- race meeting duties;
- inquiry and investigative duties; and
- recording and compliance duties.<sup>333</sup>

### Race meeting duties

24.55 Race meeting duties of stewards broadly consist of:

- attending and observing race meetings;
- general control of race meetings in accordance with the Rules and Policies of GRNSW;
- checking security and cleanliness of kennel bays;
- participation in kennelling procedures including validation of ear brands, weighing and kennel allocation;
- undertaking sampling of greyhounds for the purpose of drug detection;
- supervising of veterinary inspections; and
- monitoring betting activity on race meetings.<sup>334</sup>

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<sup>329</sup> Greyhound Racing Victoria “Animal Welfare Penalty Guidelines” dated 1 July 2014: <<http://www.grv.org.au/wp-content/uploads/2014/07/Animal-Welfare-Penalty-Guidelines-July-1-2014.pdf>> (accessed 27 May 2016).

<sup>330</sup> Ibid, p. 3.

<sup>331</sup> Ibid, p. 9.

<sup>332</sup> Ibid, p. 10.

<sup>333</sup> “Employment Agreement between GRNSW and Norm Becroft”, Sch. 2: GRNSW Response to Order 13 dated 15 September 2015.

<sup>334</sup> Ibid.

## Inquiry and investigative duties

24.56 The inquiry and investigative responsibilities of stewards generally include investigating incidents and complaints, and attending and determining inquiries and appeals.<sup>335</sup> These aspects have been considered above. Historically, the Chief Steward has chaired inquiries. GRNSW states that, since February 2015, the legal section of GRNSW's recently established Legal & Policy Unit has also been taking an active involvement in inquiries.<sup>336</sup>

## Recording and compliance duties

24.57 The duties of stewards also include:

- administering and enforcing the Rules;
- conducting kennel inspections;
- monitoring tracks, and racing and training facilities, to ensure adequate monitoring, and subsequent reporting of occupational health and safety risks and welfare risks;
- ear branding, microchipping and recording identification information of greyhounds to be registered by GRNSW;
- conducting routine inspections of properties to ensure compliance with the Rules; and
- performing all other powers of discretion as required by the Rules.<sup>337</sup>

## Operational context

### GRNSW stewards

24.58 From an organisational perspective, since 2009 GRNSW stewards have been grouped within the organisational unit responsible for overseeing integrity. Between 2009 and 2012 this was called the Racing & Integrity Unit; between 2012 and 2015 it was called the Integrity Unit.<sup>338</sup> Following that, it became known as the Compliance Unit.

24.59 At some point prior to July 2010, the job title "Steward" was, in terms of GRNSW's allocated job titles, replaced by the term "Integrity Officer" (although, the Rules still refer to stewards and contain a definition for "Steward"). In July 2010, GRNSW appointed permanent "Regional Integrity Officers" throughout NSW. The Regional Integrity Officers, to be located in the North Coast, Hunter and Central West regions, were tasked with undertaking race day stewarding, kennel inspections, ear branding and marking in those areas.<sup>339</sup>

### *Establishment of the control room*

24.60 In 2011 GRNSW established a "Control Room" at its Rhodes offices. The race day integrity functions and duties of stewards were split between a steward physically at the track (the "On-Track Integrity Officer") and a senior steward who would oversee and control the race meeting from the control room ("the Race Day Controller").<sup>340</sup> In the GRNSW Annual Report 2011, GRNSW's former Chief Executive, Mr Brent Hogan, described the new measures as follows:

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<sup>335</sup> "Employment Agreement between GRNSW and Norm Becroft", Sch. 2: GRNSW Response to Order 13 dated 15 September 2015.

<sup>336</sup> GRNSW Annual Report 2015, p. 17.

<sup>337</sup> "Employment Agreement between GRNSW and Norm Becroft", Sch. 2: GRNSW Response to Order 13 dated 15 September 2015.

<sup>338</sup> GRNSW Organisational Charts from 2009-2015: GRNSW Response to Order 1 dated 1 May 2015.

<sup>339</sup> GRNSW Annual Report 2010, p. 13.

<sup>340</sup> GRNSW Annual Report 2011, p. 6.

In a nutshell, we will establish a 'control room' at the Rhodes office that will have live feeds of the race broadcast footage, surveillance footage from the kennel blocks and video conferencing equipment to communicate between the tracks and the office in real time, together with modern bet monitoring tools.<sup>341</sup>

24.61 The use of the Control Room was also intended to enhance the coverage of venues that previously had only been serviced by one steward (for example, Casino and Lismore).<sup>342</sup> The new system of race day oversight was designed to work as follows:

The control room will be manned by a Race Day Controller, who will also be assisted by an on-track Integrity Officer. The network will beam live pictures back to the control room of raw race vision and closed circuit TV of restricted areas on-course, while also allowing for video conferencing between the race track and control room ...

The central control room will enhance integrity services by allowing for advanced monitoring of betting trends, early identification of potential incidents, detailed post meeting reviews and one central contact point for race day operational matters.<sup>343</sup>

24.62 Since about early 2013/2014 (when Wagga Wagga was included in the Control Room coverage), the Control Room has been utilised for all TAB venues.

#### ***Changing titles – the 'Compliance Unit'***

24.63 In FY15, the Integrity Unit became known as the 'Compliance Unit'. This change was part of an expansion and restructure of GRNSW's compliance section in the wake of the *Four Corners program* and the live baiting scandal and the establishment of the Commission. The Compliance Unit comprises:

- a new investigation section;
- a new intelligence section;
- a restructured integrity section; and
- the existing compliance section.<sup>344</sup>

According to GRNSW, the restructure is intended to:

... ensure all industry supervision and regulatory activities are conducted by the one area and will facilitate greater collaboration and a more nimble posture ensuring the compliance function can better identify and respond to known and emerging issues.<sup>345</sup>

24.64 The Compliance Unit is within the Regulatory Branch of GRNSW. GRNSW has had staff turnover in its Regulatory Branch. As at May 2016, Stephen Dodd is the interim General Manager of the Regulatory Branch.<sup>346</sup> Within the GRNSW organisational structure, the Chief Steward reports to the General Manager of the Regulatory Branch, who in turn reports to the Chief Executive (currently, Mr Paul Newson).<sup>347</sup>

24.65 Mr Clint Bentley was Chief Steward at GRNSW from August 2009 until 22 February 2016 (four days after he gave evidence to the Commission) at which time he moved to the position of Manager, Licensing within the Operations Branch of GRNSW. As at May 2016, Mr Paul Marks held the position of Acting Chief Steward.

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<sup>341</sup> GRNSW Annual Report 2011, p. 6.

<sup>342</sup> Ibid, p. 14.

<sup>343</sup> Ibid.

<sup>344</sup> GRNSW Annual Report 2015, p. 16; GRNSW Submission 769 to the Commission dated 24 August 2015, [311].

<sup>345</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [312].

<sup>346</sup> Formerly, Mr William Fanning and, later, Ms Karen Lees headed the regulatory section within GRNSW.

<sup>347</sup> GRNSW website, "Organisation Chart": <<http://www.grnsw.com.au/uploads/GRNSW-Org-chart-12.pdf>> (accessed 25 May 2016).

### **Evidence given by Mr Becroft and Mr Bentley**

24.66 The Commission received evidence from Mr Becroft and Mr Bentley in respect of their experiences as stewards at GRNSW.

#### **Mr Becroft**

24.67 Mr Becroft was employed by GRNSW as a steward for approximately 18 months from March 2014 until he resigned in September 2015. Mr Becroft was previously a greyhound trainer.

24.68 In connection with the duty of stewards to ensure and enforce compliance with the Rules, particularly in the context of kennel inspections, Mr Becroft said that, at least in the period of his employment at GRNSW, there was no complaints-management system, intelligence system or case system to enable effective reporting by stewards to GRNSW.<sup>348</sup> He further indicated that, while stewards maintained some level of communication between each other, there was no system by which they convened formal meetings among themselves.<sup>349</sup> Mr Becroft further said that he conducted only one kennel inspection in the entire period that he worked at GRNSW.<sup>350</sup>

24.69 Giving evidence in September 2015, Mr Becroft said that, with respect to the workload of stewards, the hours he worked at GRNSW were “phenomenal”, adding that the hours he spent on stewarding and ear-branding alone were “absolutely phenomenal”.<sup>351</sup> He further stated that there is “too much to do and you feel like you’re throwing a band aid at things.”<sup>352</sup>

24.70 Mr Becroft also gave evidence that, because of time constraints, it was not possible to stay on top of everything occurring at the track.<sup>353</sup> Mr Becroft said that, despite the existence of the Control Room at Rhodes, more stewards were needed on the track.<sup>354</sup> Mr Becroft gave the following evidence:

... you can't stay on top of everything that's occurring at the track like we should be but that makes it extremely difficult. And you're only one person and the time constraints. Like time management is massive. ... Through a kennelling process and all that. And then because we're also the “face” of Greyhound Racing New South Wales on the track, that's what the trainers get to see - is just us. Well, if we catch a trainer they might have had a blue or something with someone in the office or a grading. There was always some issues and because we were the face we were the person that they actually saw. They wanted to talk about it and you just couldn't give them the time that they probably deserved. And you feel bad for that. But the time constraints of running that entire meeting from go to whoa, and doing everything on your own it's just huge.<sup>355</sup>

24.71 Mr Becroft further said:

And you'd ring backwards and forwards [to the control room at Rhodes]. And sure they assisted with certain things but the physicality of the job and dealing one on one with participants and the crowd and then the tracks, and the curators and the kennel staff and security and it's just one steward. You're on your own. You're literally in a row boat with a tidal wave coming.<sup>356</sup>

#### **Mr Bentley**

24.72 As noted, Mr Clint Bentley was GRNSW's Chief Steward from August 2009 until 22 February 2016.

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<sup>348</sup> 30 September 2015: T254.38-44.

<sup>349</sup> Ibid, T255.22-23.

<sup>350</sup> Ibid, T256.15-30.

<sup>351</sup> Ibid, T257.35-39.

<sup>352</sup> Ibid, T258.4-5.

<sup>353</sup> Ibid, T258.8-10.

<sup>354</sup> Ibid, T257.44-258.1.

<sup>355</sup> Ibid, T258.8-21.

<sup>356</sup> Ibid, T258.36-259.3.

24.73 Mr Bentley gave evidence to the Commission in February 2016. In terms of the number of GRNSW stewards over which he had supervision, Mr Bentley estimated it was “about nine full-time or ten full-time and one casual, one or two casuals.”<sup>357</sup>

24.74 In terms of the race day responsibilities of stewards, Mr Bentley said that they:

... oversee the conduct of a race meeting and ensure that it's conducted ... in the bounds of the rules of greyhound racing. We order ..., any greyhound to be examined by a veterinary surgeon or a greyhound to be selected for a post or pre-race drug test. Betting disputes. It's vast and varied.<sup>358</sup>

24.75 In relation to meetings held at TAB tracks, Mr Bentley confirmed that there is one steward on-track and one steward (being the Chief Steward or the Chairman of Stewards) in the Control Room at Rhodes.<sup>359</sup> He confirmed that there used to be two stewards on-track, but this was reduced to one in 2013 with the introduction of the Control Room. When asked if he thought there should be more stewards on-track, Mr Bentley said that he would “absolutely” prefer that there was more than one steward on-track. He said:

... the more people you've got on the ground, the more opportunity you have to .. control things as best as possible.<sup>360</sup>

24.76 In relation to meetings held at non-TAB tracks, Mr Bentley said that, while GRNSW stewards are “occasionally” sent to non-TAB tracks, they do not service non-TAB tracks frequently and that it had become “more and more rare” for them to visit non-TAB tracks.<sup>361</sup> He said that funding was the reason for this diminishing oversight. Mr Bentley said there had been:

[an] organisational shift towards non-TAB meetings being more like a picnic type approach rather than the betting ... coverage that is our TAB meetings.<sup>362</sup>

24.77 On the topic of stewards' level of training and skills, Mr Bentley said that training was mainly “on-the-job” and that there are “no courses that they can go and attend”. In relation to club-appointed stewards for non-TAB tracks, Mr Bentley said:

So they [the Clubs] find their own employees in relation to that, and I'm not sure what each individual club would determine is the necessary qualifications. I would say in a lot of cases it's probably not much.<sup>363</sup>

24.78 Mr Bentley also gave evidence about the process for completing stewards' reports, including the new form of stewards' report introduced by GRNSW in March 2016. This aspect is discussed in Chapter 4.

## Club-appointed stewards

24.79 As noted above, the Act and Rules contemplate that club-appointed stewards may officiate at tracks where no GRNSW-appointed steward is officiating. Rule 104(4) allows GRNSW or its appointed stewards to require clubs to make available persons to act as officials at a meeting.<sup>364</sup> Club-appointed stewards are often industry participants and can be, for practical purposes, volunteers. They may often lack the training and experience that GRNSW-appointed stewards

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<sup>357</sup> 17 February 2016: T839.7-8. The Commission notes that, as at April 2016, GRNSW employed approximately 12 full-time stewards: Sector Seven Pty Ltd, “Stewards Review Report” (April 2016) (“the Sector Seven Stewards Report”), p. 40.

<sup>358</sup> Ibid, T839.25-29.

<sup>359</sup> Ibid, T839.35-38.

<sup>360</sup> Ibid, T840.19-20.

<sup>361</sup> Ibid, T840.29-42.

<sup>362</sup> Ibid, T840.40-43.

<sup>363</sup> Ibid, T841.22-24.

<sup>364</sup> The Rules R 104(4).

possess. The report of a recent review into the role stewards in the greyhound racing industry NSW relevantly said:

Club stewards come from various backgrounds generally closely associated with the greyhound racing industry and Club's (sic) experience a high turnover. We were advised that Club stewards may receive payment as low as \$60 per day and the quality of Club stewards and their knowledge and understanding of the Rules is poor with GRNSW "left picking up the pieces" following Club race meetings. GRNSW senior staff considered that the chance of offences being detected through swabbing at non-TAB tracks by Club stewards is "virtually non-existent". Comments were also made as to the generally inferior facilities and kennel security at Club tracks. There is a strongly held view that Clubs and Club stewards are ignored by GRNSW and are left to operate without any GRNSW training or resources.

Benchmarking reveals that GRNSW is the only Code that utilises Club stewards. We were advised in interview that GRSA do not utilise Club Stewards because of real or perceived concerns as to both competency and funding influence. GRV do not utilise Club stewards because of real or perceived concerns about professionalism, quality and consistency, however they do have a pool of some thirty (30) casually employed stewards to supplement their full time employed stewards. Racing Victoria does not utilise Club stewards.<sup>365</sup>

24.80 Issues arising in connection with club-appointed stewards are also discussed above, in the context of the evidence of Mr Bentley.

#### **GRNSW submissions**

24.81 In its August 2015 written submission to the Commission, GRNSW acknowledged a need for "comprehensive training for stewards" so that they are equipped with the skills and ability to discharge their functions.<sup>366</sup>

24.82 GRNSW stated that it was "exploring training opportunities and professional development for stewards." This, it was said, would include an administrative law training program tailor-made for decision-making in the greyhound racing context.<sup>367</sup>

24.83 On 27 January 2016, GRNSW announced it had provided funding for an Animal Welfare Course to be run by the Intensive Animal Faculty at TAFE Illawarra. The course is aimed at GRNSW integrity and compliance staff. GRNSW informed the Commission that 19 staff members are undertaking the course and are expected to complete it in June 2016.<sup>368</sup>

#### **Sector Seven Stewards Report – April 2016**

24.84 On 29 April 2016, the consultancy firm Sector Seven Pty Ltd provided GRNSW with a report of its review into stewarding (the "Sector Seven Stewards Report").<sup>369</sup>

24.85 Recognising that the powers vested in stewards under the Rules and by delegation from GRNSW are broad, Sector Seven defined the "objectives of stewarding" as follows:

- Maintaining the integrity of greyhound race meetings (by supervision and active direction including related disciplinary action); and
- Safeguarding the welfare of greyhounds presented to compete in greyhound race meetings (by supervision and active direction including related disciplinary action).<sup>370</sup>

24.86 The primary focus of the Sector Seven Stewards Report was said to be:

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<sup>365</sup> Sector Seven Stewards Report, p. 28.

<sup>366</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [412].

<sup>367</sup> *Ibid*, [413].

<sup>368</sup> GRNSW Response to Order 27 dated 19 February 2016, [3(c)], [7(a)].

<sup>369</sup> Sector Seven Stewards Report.

<sup>370</sup> *Ibid*, p. 4.

... the identification of improvements that GRNSW may effect in order to improve upon its current model and approach to stewards and stewarding to more closely align the currently broad range of stewarding activities to the two stewarding objectives ...<sup>371</sup>

24.87 Consistent with evidence that the Commission received (discussed above), a problem identified in the Sector Seven Stewards Report was the current “two-tier system” of stewarding, by which GRNSW utilises its own employed stewards and stewards engaged directly by greyhound racing clubs. Sector Seven said the two-tiered system involves:

... GRNSW directly regulating most TAB-track greyhound race meetings and industry enthusiasts’ effectively self-regulating non-TAB track race meetings (we say this because of an apparent lack of GRNSW regulatory oversight and supervision in respect of registered Greyhound Racing Clubs). This model contrasts starkly with the racing codes benchmarked in our review and does not reflect best practice governance.<sup>372</sup>

24.88 Sector Seven made 23 findings and recommendations directed, in large part, to ensuring greater control and oversight by GRNSW, not only over stewards but over all race day roles and activities to improve the regulation and integrity of the industry. Sector Seven identified the current model of stewarding as in need of structural change to ensure that: stewards are appropriately qualified and trained; their role descriptions are clear; they are guided and supported by GRNSW; their performance is benchmarked and reviewed; and they are not exposed to situations where conflicts of interest may arise.

24.89 Recommendations that Sector Seven made include:

- GRNSW should monitor and supervise clubs, and club stewards should be subject to a formal appraisal system. Alternatively, GRNSW should transition to a model of having only GRNSW-employed stewards.
- GRNSW should transition to a system whereby all key race day roles are performed by GRNSW employees.
- GRNSW should introduce four steward classifications: (1) cadet stewards; (2) race day stewards; (3) swab stewards; and (4) inquiry stewards. If club stewards are retained, they should fall within the “race day” steward classification.
- In addition to full-time stewards, GRNSW should employ a pool of casual stewards to replace and augment full-time stewards as required.
- GRNSW should implement a formal Cadet Steward induction and training program to ensure a minimum education level for all stewards; and implement a program of mandatory ongoing training for all stewards (minimum five hours annually).
- GRNSW should implement a suite of Board-approved policies and a manual containing standardised procedures with respect to stewards.
- Stewards’ duties should be limited to race day duties of control, supervision and regulation (for race day stewards and swab stewards), and related inquiry duties (for inquiry stewards). The responsibilities of each classification of stewards should be documented and key performance indicators (KPIs) developed for each steward classification against which their performance can be reviewed.
- The responsibilities of the Chief Steward should be clarified and documented.

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<sup>371</sup> Ibid, p. 4.

<sup>372</sup> Ibid, p. 5.

- GRNSW should implement a regulatory “intelligence management” system.
- GRNSW should implement a regulatory “risk-based” strategic program.<sup>373</sup>

24.90 The Sector Seven Stewards Report identified certain duties that, in the opinion of Sector Seven, should not be performed by stewards because those duties were “not sufficiently aligned to the stewarding objectives” or “appear not to be primarily regulatory in nature and/or to involve structural conflicts” and/or to “duplicate other roles within GRNSW”. These duties include:

- Participant registration and licensing decisions, which should be made by a Board Committee or Integrity Council.
- Ear-branding, micro-chipping, property inspections and out-of-competition testing of greyhounds, which should be performed by Compliance Officers (who are not stewards).
- The granting of approvals, making of declarations and orders in relation to Code of Practice compliance, which should be performed by Compliance Officers.
- Investigative and decision review functions, which should not be performed by stewards who make original decisions while officiating at race meetings because of the potential for conflicts of interest to arise.<sup>374</sup>

24.91 The Commission has considered the Sector Seven Stewards Report. GRNSW has not publicly indicated the extent to which, if at all, it accepts the recommendations in the Sector Seven report.

24.92 Stewards play an important role in the greyhound racing industry. They are part of the tools by which the regulator seeks to ensure the integrity of race meetings. Together with on-track veterinarians, stewards also have an important role to play in seeking to ensure, within limits, the welfare of greyhounds at race meetings.

24.93 Club-appointed stewards are often industry participants and, for practical purposes, volunteers. Their contribution may be well intentioned. However, such persons may lack the skill and experience of a GRNSW-appointed steward. The Commission is firmly of the view that GRNSW stewards should officiate at all greyhound race meetings in NSW, whether the meetings are TAB meetings or non-TAB meetings.

24.94 The Commission is also of the view that there should be at least two stewards on-track at any race meeting rather than just the single on-track steward as is typically the case at present. The workload and pressures of a race meeting on a single steward are unduly onerous and are not sufficiently alleviated by the assistance that can be provided by the steward at the Control Room at Rhodes.

24.95 The Commission finds that GNSW has previously devoted insufficient resources for stewards. The evidence of persons such as Mr Becroft and Mr Bentley illustrates this. GRNSW should ensure that adequate resources are provided for stewards to be able to carry out their functions appropriately.

24.96 The Commission notes that, previously at least, stewards were tasked to undertake property inspections and investigations of industry participants (other than stewards’ inquiries). The Commission is of the view that such functions should appropriately be undertaken by compliance officers and dedicated investigators within GRNSW and should not ordinarily be

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<sup>373</sup> Ibid, pp. 6-17.

<sup>374</sup> Ibid, pp. 14-17.

undertaken by GRNSW stewards. Among other advantages, this will reduce the likelihood of perceived conflict of interest, or at least tension or participant-generated ill-will, where a steward is required to officiate at a race meeting involving a participant who was previously the subject of property inspection which found alleged breaches of the Rules or codes of practice. The removal of stewards from such types of work – which can be undertaken by compliance staff and investigators – has the potential to ensure more efficient use of resources for dedicated stewards’ activities such as officiating at race meetings and holding stewards’ inquiries.

- 24.97 The Commission finds that, except where the Sector Seven Stewards Report differs from the recommendations of the Commission, they should be adopted by GRNSW. Consistent with the approach recommended in other Chapters of this Report, however, any move to a regulatory ‘risk-based’ strategic program should not result in a failure to ensure that compliance officers maintain relatively frequent and random kennel inspections at the properties of industry participants. This aspect is considered further in Chapter 22.

## Recommendations

59. Greyhound Racing NSW officials or the officials of any new regulator should officiate at all greyhound race meetings in NSW, whether the meetings are TAB or non-TAB meetings.
60. There should be at least two stewards on-track at any race meeting.
61. Greyhound Racing NSW or any new regulator should ensure that adequate resources are provided for stewards to be able to carry out their functions appropriately.
62. Property inspections and investigations of industry participants (other than stewards’ inquiries) should be undertaken by compliance staff and dedicated investigators within Greyhound Racing NSW (or any new regulator) and should not ordinarily be undertaken by stewards.
63. Greyhound Racing NSW or any new regulator should adopt the recommendations of the Sector Seven Stewards Report except where they differ from a recommendation of the Commission. However, a move to any regulatory, risk-based strategic approach should not result in a failure to ensure that compliance officers maintain frequent and random kennel inspections at the properties of industry participants.



## 25 Economic sustainability: GRNSW's current financial status

25.1 Under the Terms of Reference, the Commission is tasked with, among other matters, examining the current and future financial viability of the greyhound industry in New South Wales, specifically:

A. Identify issues relating to the governance, integrity and animal welfare standards of the greyhound racing industry in NSW;

and

C. Evaluate:

...

6. whether the issues identified in Term A are able to be appropriately addressed, to permit the continuation of a greyhound industry in NSW that is sustainable and provides an ongoing economic and social contribution to the state.

25.2 Currently, Greyhound Racing NSW regulates the operation of 34 greyhound tracks in NSW. In its Submission to the Commission dated 24 August 2015, GRNSW conceded that the facilities of many “clubs around NSW are outdated and require significant infrastructure upgrades including improved track design.”<sup>375</sup> GRNSW stated that it “has calculated that the current level of funding is insufficient to support the level of change required to raise and maintain operational standards across the existing club network.”<sup>376</sup> However, as set out below, a Report prepared for the Commission by PricewaterhouseCoopers (“PwC”) has concluded that, based on revised forecasts, prepared by GRNSW, which PwC and the Commission considers reasonable, GRNSW *will probably be able to maintain operational standards across the existing club network*.

25.3 The revenue of GRNSW is principally funded through:

- Race Field Information Use Fees (“RFIU Fees”): fees charged by the racing control bodies to wagering operators for using race field information prepared by the controlling bodies. RFIU Fees were introduced after the NSW Parliament amended the *Racing Administration Act 1998* (NSW); and
- Contractual arrangements with TAB Limited (now Tabcorp Holdings Ltd) by which fees for delivery of a racing product are distributed between GRNSW, NSW Racing Pty Limited (“Racing NSW”), NSW Thoroughbred Racing Board (“TRNSW”), and Harness Racing NSW (“HRNSW”) in accordance with the Racing Distribution Agreement (“RDA”): a 99 year agreement entered into in 1998 (“TAB distributions”).

25.4 In its Submission to the Commission, GRNSW outlined, in general terms, how it is funded, the important sources of revenue that make it unique compared to other racing bodies, and the inherent problems a ‘top down’ funding model can cause:

The greyhound racing industry is unique as the bulk of the cash-flow runs from the top down (by way of wagering distributions as a result of the RDA, through GRNSW and on to participants), rather than from the bottom up (for example, through levies taken on the sale of food and drinks

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<sup>375</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [550].

<sup>376</sup> *Ibid*, [550].

of race meetings to GRNSW as the industry's regulatory and commercial head). Because of this model, it is GRNSW – not the industry itself – which inevitably bears the onus of administering and financing the industry's racing activities including the administration and financing of race meetings. Accordingly, for the greyhound industry as a whole to be sustainable, the ability of the GRNSW to fund the industry in a way that assists its operation is fundamental. It is the body which is to drive integrity, animal welfare, and operational aspects of the industry.<sup>377</sup>

25.5 The Commission says that GRNSW will *probably* be able to maintain operational standards across the *existing* club network because the forecasts are based on the assumption that TAB distributions will grow by [REDACTED] and that RFIU Fees will grow by [REDACTED] in 2016 and by [REDACTED] thereafter. These assumptions are not without risk.<sup>378</sup> In particular, [REDACTED]

[REDACTED]

25.6 The forecasts upon which PwC acted also assumed that GRNSW would continue as the industry regulator. The Commission has recommended that the regulatory functions now exercised by GRNSW should be given to another entity. If this recommendation is accepted, there will be a further cost to the industry which has not been quantified. Nevertheless, this additional cost should not be so great as to falsify the conclusion that the industry will have sufficient funding to continue through to FY20.

25.7 Moreover, the industry will be in a much better position financially if Parliament accepts the Commission's recommendation, below, that the Inter-Code Deed (a 99-year agreement entered into by Racing NSW, HRNSW and the then TRNSW and Greyhound Racing Authority which governs the distribution of the funds derived from the RDA between the three racing codes in NSW) should be amended to reflect the contribution that each racing code makes to TAB revenue.

25.8 The Commission's view is that the greyhound industry will be able to continue to make an economic contribution to the State, albeit at a lower level than in the past. Relevant factors in determining whether the industry can provide an economic contribution to the State include:

- the economic contribution to the State of NSW (both through direct means such as wagering tax, and indirect means such as employment);
- costs incurred in regulating the industry;
- costs incurred by and returns (prize money) to participants in the industry; and
- revenue generated from the greyhound racing wagering market.

## Current financial position of GRNSW

25.9 The economic contribution to the State of NSW by the racing industry was the subject of a report delivered to the NSW Government by IER in 2014 "Size and scope of the NSW Racing Industry" ("the IER Report"). Given the comprehensive scope of that report and the Government's ongoing reliance on the figures it reported, the Commission did not re-analyse this topic in great detail.<sup>379</sup>

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<sup>377</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [612].

<sup>378</sup> PwC Report, p. 26.

<sup>379</sup> See for example, IER Report, p. 9: Overview of Key Results. The figures show that the greyhound racing industry contributed approximately \$335.7m to the NSW economy per annum.

- 25.10 The IER Report stated that in FY13, the greyhound industry generated more than \$241 million in direct expenditure for the NSW economy, and that flow on effects increased the size of the industry's value-added contribution to \$335.7 million.<sup>380</sup> Of this sum, \$176.9 million was made up of wages and salaries earned from employment generated by the industry. The report stated that in FY13, the greyhound racing industry sustained more than 2,700 full-time jobs - a figure which included direct employment in the industry as well as the secondary impacts on other industries that experience increased demand because of greyhound racing. These industries included veterinary practices, dog food suppliers, retail, tourism, accommodation and transport services.<sup>381</sup>
- 25.11 Race meetings in NSW attracted attendances of 282,000 people in FY13, and these attendees expended more than \$14.5 million for the benefit of the industry. In FY13, the NSW Government received \$159 million from taxation on wagering in the three racing codes. About \$30 million was received in taxation generated by greyhound racing. Revenue from the racing codes was forecast to increase by 4.3% per annum over the four years to 2017-2018<sup>382</sup>; although, given the increasing popularity of sports betting, the Commission thinks this forecast increase may be too high. In any event, GRNSW's tax harmonisation proposal (discussed below) is certain to reduce the amounts the State receives from the racing codes.
- 25.12 The figures suggested by the IER Report were significantly higher than a report produced by Access Economics for GRNSW in 2010 ("Access Economics Report"). For FY10, Access Economics found that the total economic contribution of the greyhound racing industry in NSW was estimated at \$144.2 million, of which \$92.3 million was a direct contribution and \$51.9 million was indirect being "flow-on economic benefits in the period with a substantial amount being generated through breeding (\$24.4 million) and training (\$12 million) activities." The Access Economics Report estimated the total employment in the industry was 1,561 full-time equivalent positions of which 1,086 were direct and 475 indirect. Access Economics also found that 13,000 participants were involved in the industry.<sup>383</sup>
- 25.13 The more recent report of the Australian Working Dog Alliance, provided to GRNSW in July 2015, "Review and assessment of best practice rearing, socialisation, education and training for greyhounds in a racing context" ("the WDA Report"),<sup>384</sup> appears to have preferred the figures in the Access Economics Report to those in the IER Report. The WDA Report stated:
- The greyhound industry in New South Wales is estimated to provide a total economic contribution of around \$145 million per year, and provides employment for about 1500 full time equivalent positions. Over 13,000 participants are involved in the NSW racing greyhound industry, including owners, breeders, trainers, and those organising race meetings at administration of the sport, many on a voluntary basis.<sup>385</sup>
- 25.14 Information obtained by the Commission during the Inquiry indicates that the IER figures are too high and that even the WDA figures may be too high. That information shows, however, that the industry still directly employs many persons on a full-time, part time or casual or voluntary basis.
- 25.15 The Commission sought and received information from the 34 greyhound clubs concerning employment. This information showed that 52 persons are directly employed by the clubs on a full-time basis that 511 persons are employed on a part-time or casual basis and that 464 people provide voluntary services. GRNSW provides employment for 79 people.

<sup>380</sup> IER Report, p. 9.

<sup>381</sup> Ibid.

<sup>382</sup> NSW Budget Statement 2014-2015, Budget Paper No. 2, Part 6 p. 22.

<sup>383</sup> Select Committee First Report, pp. 9-10.

<sup>384</sup> Ex S (17-19 November 2015)

<sup>385</sup> Ibid, p. 12.

- 25.16 In FY15, 1,846 persons were registered as owner-trainers, 5,952 persons were registered as owners of greyhounds, 1,470 persons were registered as full time trainers, 1,098 persons were registered as attendants being person permitted to handle greyhounds, and 1,270 persons were registered as breeders. As at 19 February 2016, 709 persons were registered as rearers and 425 persons were registered as educators. It is safe to assume that some persons falling into one of these categories also fall into one or more other categories. Thus, a number of those registered as breeders, rearers or educators may also be registered as owners or trainers. Some registered persons may no longer be active in the industry. However, even with these qualifications, several thousand people are directly engaged in the greyhound industry in some form or other. Many other persons, such as those referred to in the IER Report, also provide goods and services to the greyhound industry and benefit the economy of NSW.
- 25.17 As the foregoing figures show, the greyhound racing industry has made a positive economic contribution to NSW in previous years. It seems highly probable, however, that the industry will not be able to maintain its previous level of contribution to the State's economy in future years. Tax harmonisation legislation (discussed below) will certainly reduce the amount of money that the State receives from greyhound racing. There will also be a decline in revenues from pari-mutuel wagering as punters increasingly turn to betting with corporate bookmakers with a consequential effect on State revenues. The increasing popularity of sports betting will also reduce the revenue from pari-mutuel betting. Changes that will be brought about in restructuring the greyhound industry – particularly GRNSW's plan to reduce the number of tracks from 34 to a maximum of 14 – will affect the economies of many towns in New South Wales.
- 25.18 Because the industry's financial sustainability relies entirely on the viability of GRNSW, the Commission has focused its inquiries on whether the industry body is a viable entity and whether, as a regulator, it would be able to fund the additional animal welfare expenditure and organisational restructures that are required to ensure that the industry can regain/maintain its social licence in the 21<sup>st</sup> century. The additional animal welfare measures and organisational restructures that are required are detailed in other chapters of this Report.

## Findings of the Select Committee

- 25.19 The Select Committee on Greyhound Racing in NSW ("the Select Committee"), analysed the "economic viability and long term sustainability of the greyhound racing industry in NSW" as part of its Inquiry. The Select Committee analysed the sustainability of the industry as a whole, as well as the viability of participating in the industry from an industry participant perspective.
- 25.20 As a result of its inquiries, the Select Committee made the following finding in its First Report (March 2014):

The Committee finds that with its current structure and sources of revenue the greyhound racing industry in New South Wales may be unsustainable. Returns to trainers and owners do not cover costs, which leads to the loss of quality dogs to Victoria and elsewhere, a reduced number of industry participants and contributes to making existing clubs and tracks unviable.<sup>386</sup>

## Sustainability of the industry

- 25.21 The Select Committee heard evidence and received submissions from a number of parties on the economic viability of the industry body and its ability to continue to fund the operation of the

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<sup>386</sup> Select Committee First Report, p. 41.

industry in NSW. Most notably, the Select Committee heard evidence from the former Chief Executive of GRNSW, Brent Hogan.

- 25.22 Mr Hogan expressed his view to the Select Committee that “the New South Wales greyhound racing industry is not viable in the short to medium term and certainly not sustainable in the longer term.”<sup>387</sup> The Select Committee and Mr Hogan noted that this was also the view expressed by the Joint Industry Submission to the Committee, prepared by five industry bodies, namely GRNSW, the NSW Greyhound Breeders, Owners and Trainers Association (“GBOTA”), the Metropolitan and Provincial Greyhound Clubs Association, the Greyhound Racing Clubs Association and the Greyhound Action Group (“GAG”).<sup>388</sup>
- 25.23 The reasons for the bleak economic assessment by Mr Hogan and the Joint Industry Submission were “increasing costs and regulatory pressures, as well as increasing risks of compliance with OH&S, Workcover and public liability.”<sup>389</sup> Both GRNSW and the parties to the Joint Industry Submission suggested that, without changes to the funding model and the structure of the industry in NSW, the industry would face economic collapse.<sup>390</sup>
- 25.24 After its First Report, the Select Committee engaged PwC to undertake economic modelling on a number of different scenarios designed to increase the funding the industry would receive, and to analyse the impacts of the proposed changes on the finances of the Government (“the 2014 PwC Report”).
- 25.25 As a result of the 2014 PwC Report, the Select Committee delivered a Second Report in October 2014 with recommendations as to the best course of action to improve the funding provided to the greyhound racing industry in NSW. The recommendations were:

**Recommendation 1**

That the Minister for Hospitality, Gaming and Racing amend section 16 of the Racing Administration Regulation 2012 in order to remove the legislated race field information use fee cap and allow a relevant racing control body to determine the fees for race field information use.<sup>391</sup>

...

**Recommendation 2**

That the NSW Government implement a staged reduction in taxation rates on wagering to ensure New South Wales racing is competitive with racing codes in other States (particularly Victoria).<sup>392</sup>

**Recommendation 2A**

That, if the Government decides it will not implement Recommendation 2 or will not reduce rates to similar levels to Victoria in the medium term, the committee recommends that the NSW Government conduct a full review and analysis of the competitive position of racing in New South Wales within two years with particular focus on the viability of country racing.<sup>393</sup>

- 25.26 In 2015, the NSW Government enacted amendments to legislation which gave effect to Recommendation 1 and Recommendation 2. These legislative changes are discussed later in this Chapter.

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<sup>387</sup> Select Committee First Report, p. 13.

<sup>388</sup> Ibid, p. 13.

<sup>389</sup> Ibid, p. 14.

<sup>390</sup> Ibid, p. 15.

<sup>391</sup> Select Committee Second Report, p. 14.

<sup>392</sup> Ibid, p. 16.

<sup>393</sup> Ibid, p. 16.

25.27 Importantly, the Select Committee emphasised that, in addition to these economic recommendations, “the current management and operational model under which the industry operates needs substantial review and restructure.”<sup>394</sup> Without a review of these further matters, the Select Committee intimated that the above recommendations would be of little benefit to the greyhound racing industry in NSW.

25.28 In its comments, the Select Committee concluded that:

... [T]he difficulties the greyhound industry finds itself in are in part due to factors beyond the control of current management. The distribution of racing funds and lower tax rates in competing jurisdictions puts Greyhound Racing NSW at a competitive disadvantage. With a spectre of rising costs to the industry, the Committee finds that the greyhound racing industry in New South Wales may be unsustainable under current arrangements. The Committee also notes that the current management has been involved with or perpetuated a number of decisions that have compromised the viability of the industry.<sup>395</sup>

### **Economic viability for industry participants**

25.29 The Select Committee also focussed its inquiries on the economic impacts faced by participants and country clubs in NSW.

25.30 Submissions and evidence given to the Select Committee indicated that industry participants had a general concern that their costs were increasing and that the prize money available to be won at races was not adequate to cover the costs of their participation.

25.31 The issue was explained to the Select Committee by the GAG, who described prize money as “the life blood of the industry”. The GAG submission recognised that participants were not looking to make money from participating, but they were looking to cover the costs of what was a hobby for the “average participant”.

Given its hobby/past time underpinning, it is not realistic to expect net positive returns for the average participant; losses are the cost of the hobby. However, it is anticipated that the level of loss will be at a level that allows reasonable cost for participation.<sup>396</sup>

25.32 Similarly, the Select Committee heard evidence from Mr Becroft, at that time an industry participant and later a GRNSW employee, that the returns from prize money “do not provide sufficient returns to allow profitable businesses in the industry.” Importantly, Mr Becroft gave the following evidence:

Unfortunately the prize money in NSW Greyhound Racing doesn’t support a trainer or owner in providing best practice for the care and welfare of their Greyhounds. The level of prize money per TAB race and non-TAB race doesn’t come close to compensating an owner or trainer for the amount they invest.<sup>397</sup>

25.33 As a result of the poor returns for business in NSW compared with other States, evidence given to the Select Committee by a number of witnesses suggested that many industry participants were moving their business to Victoria. One of those participants is Mr Paul Wheeler, widely considered as the most successful industry participant in Australia. Mr Wheeler said that his business now conducts most of its racing activities interstate, despite his property being based in NSW. He gave evidence to the Select Committee as follows:

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<sup>394</sup> Select Committee Second Report, p. 16.

<sup>395</sup> Select Committee First Report, p. 41.

<sup>396</sup> *Ibid*, p. 18.

<sup>397</sup> *Ibid*, p. 18.

If we did not make that move approximately 15 to 20 years ago we would be out of business today. This is because the greyhound industry in NSW is so unviable compared to other states in Australia and it could not support our operation.<sup>398</sup>

- 25.34 The economic impact on industry participants involves more than the financial outcomes for them. Lower financial returns for industry participants must inevitably affect animal welfare with less being spent on such matters as appropriate training and education, veterinary treatment, appropriate kennelling and exercise yards. It must also increase the likelihood of a greyhound being euthanased: owners and trainers have little, if any, incentive to keep training and feeding greyhounds that cannot pay their way.
- 25.35 Furthermore, the NSW industry is in competition with the industry in other States. The owners of dogs will want to race their dogs where the prize money is highest. In NSW prize money is greatly inferior to that in Victoria. In the 2014-15 year, prize money in Victoria on average was 77% higher than in NSW. In NSW, it averaged \$1,854 per race; in Victoria, it averaged \$3,289 per race. These figures have consequences for the economic viability of the industry itself. Mr Hogan explained that:

What it means in practice is that the higher quality greyhounds will move to Victoria. Those are the greyhounds that are going to attract the most public interest, if you like. ... What it ultimately means is that the quality of the race product we produce and put on television screens is generally of a lesser standard compared to the product being put on screen in Victoria, and, for those consumers who bet based on quality, that is obviously negatively impacting on us [GRNSW].<sup>399</sup>

### Economic viability of country racing clubs

- 25.36 The Select Committee also concerned itself with the economic problems faced by country racing clubs and their potential place in the NSW greyhound racing industry. The First Report noted that, while the economic benefits provided by non-TAB country racing clubs to the industry are lower than that of the metropolitan TAB counterparts, "racing events in country areas are important to the towns and regions they service."<sup>400</sup> The social contribution of the greyhound racing industry in NSW is discussed in Chapter 28.
- 25.37 Under the funding arrangements for country racing clubs, the clubs themselves are responsible for operating the race tracks and running race meets. However, the majority of country clubs receive funds from GRNSW. The First Report indicated that GRNSW accounted for between 80-90% of their funding.<sup>401</sup>
- 25.38 A key concern for many of the parties who made submissions to the Select Committee was the potential closure of country racing tracks if GRNSW withdrew funding. At the time of the First Report, Mr Hogan gave evidence that it was not GRNSW's intention to close country clubs however he indicated that "we [GRNSW] simply do not have the resources to rescue every club in the State if they find themselves in that position [of financial difficulty]."<sup>402</sup> GRNSW's current policy regarding track rationalisation and the impact on non-TAB race meets is considered in Chapter 26.
- 25.39 In its comments on the economic viability of the industry, the Select Committee noted:
- ... the importance of the greyhound racing industry to many rural and regional towns, and considers it important that these links are strengthened and maintained. The Committee considers that the industry must strive to ensure that rural and regional greyhound racing clubs are

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<sup>398</sup> Select Committee First Report, p. 22.

<sup>399</sup> Ibid.

<sup>400</sup> Ibid, p. 23.

<sup>401</sup> Ibid, p. 23.

<sup>402</sup> Ibid, p. 25.

financially strengthened, and that the best way to achieve this is to increase funding and prize money to these clubs.<sup>403</sup>

## Racing Distribution and Inter-Code Agreements

- 25.40 Until 1997, when it was privatised, the NSW TAB was Government owned. One of the conditions of its privatisation was that it should continue to fund the three racing codes – thoroughbred racing, harness racing and greyhound racing. This was achieved by the RDA which required the TAB to pay a percentage of wagering turnover to the three codes. The RDA is a 99 year agreement entered into in 1998 by the NSW Totalisator Agency Board, NSW Racing Pty Limited, the then Greyhound Racing Authority (NSW), HRNSW, and the then NSW Thoroughbred Racing Board (now Racing NSW) after the TAB was privatised in 1997.<sup>404</sup> In accordance with the RDA, about 4.7% of the TAB’s wagering turnover is paid to the three codes.
- 25.41 The TAB distribution is disbursed under the Inter-Code Deed (“ICD”). The ICD is also a 99 year agreement entered into in 1998 by Racing NSW, TNSW, HRNSW and the then Greyhound Racing Authority (NSW). Under the ICD, thoroughbred racing receives 70%, harness racing 17% and greyhound racing 13% of the distribution.
- 25.42 As the Select Committee noted, the RDA and ICD are ‘commercial in confidence’ documents and are not publicly available.
- 25.43 Participants in the greyhound racing industry have long contended that the ICD is inequitable in that, although the greyhound industry receives only 13% of the TAB distribution under the ICD, wagering on greyhound racing provides over 20% of the TAB distribution. The Commission received many submissions arguing that the distribution was grossly unfair and calling for a change in the ICD distribution. Mr Hogan told the Select Committee, “that is not a fair deal in anyone’s language”.<sup>405</sup> Mr Hogan said that, since the privatisation of the TAB, the greyhound industry had foregone \$154 million and was “leaking \$15 million a year to subsidise the other two codes of racing”.<sup>406</sup>
- 25.44 The response of Mr Peter V’landys, the Chief Executive of Racing NSW, was that GRNSW itself caused the inequity in the distribution of the TAB money to the three codes. In his evidence, he said:
- But the biggest thing that I need to highlight here today, which I think is the most relevant, is that when the TAB was privatised each code was required to conduct a minimum number of race meetings. That is all you had to do. You did not have to conduct any more than what your minimum was. The Greyhound minimum was 593 race meetings per year. Unilaterally, by a decision taken wholly and solely by the greyhound industry, they have increased that to 864 race meetings. They have gone ahead and done these meetings without the funding also knowing the dynamics of the inter-code. They always knew that they were going to have to fund it themselves, but they increased by 46 per cent the number of race meetings they were going to conduct. Any other commercial entity or commercial organisation would have done a business plan to ensure that it could fund those race meetings.<sup>407</sup>
- 25.45 GRNSW’s primary source of income is derived from the funds the racing industry receives back from Tabcorp under the RDA. Any decline in betting with Tabcorp, after adjusting for inflation, has detrimental consequences for the greyhound industry.

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<sup>403</sup> Select Committee First Report, p. 41.

<sup>404</sup> Ibid, p. 26.

<sup>405</sup> Brent Hogan, Select Committee Public Hearing 15 November 2013: T2.

<sup>406</sup> Ibid.

<sup>407</sup> Peter V’Landys, Select Committee Public Hearing 6 February 2014: T35.

- 25.46 In FY15, GRNSW received approximately \$34 million from this source of revenue, making up 72% of GRNSW’s operating revenue of approximately \$48 million.<sup>408</sup>
- 25.47 The Select Committee noted in its First Report that, while there are a number of fees that make up the total amount distributed to the racing industry, the total amount of wagering turnover distributed to the racing bodies is 4.7%. In FY13 this amounted to \$249.8 million being returned to the racing industry.
- 25.48 Like the RDA, there are a number of different formulas used in the ICD to determine how much is distributed to each racing body. However, the Joint Industry Submission made to the Select Committee indicated that the funds are essentially distributed on fixed percentages.<sup>409</sup>
- 25.49 Pursuant to the ICD, the funds are apportioned in the following approximate percentages:<sup>410</sup>
- Greyhound Racing NSW: 13%
  - Harness Racing NSW: 17%
  - Racing NSW: 70%
- 25.50 A solution to the suggested inequity of the ICD was suggested by Mr Alan Cameron in his 2008 report “Correct Weight? A review of wagering and the future sustainability of the NSW racing industry” (“Cameron Report”). Recommendation 21 of the Cameron Report was:
- The three racing codes should agree to amend the Inter-code Agreement so that returns to each code from TAB distributions are in proportion to the percentage of wagering generated by each code; in the absence of such agreement, that the Government should over-ride the Inter-code Agreement and the RDA such that the distributions from the TAB are made directly to each code and in proportion to the percentage of wagering generated by each code.<sup>411</sup>
- 25.51 The GBOTA noted in its submission to the Select Committee that the Government declined to implement the above recommendation.<sup>412</sup>
- 25.52 It is close to a certainty that the other parties to the ICD arrangements will not agree to amending them. As Mr Hogan stated in evidence to the Select Committee:
- Effectively what we are asking for when we do that is for Harness Racing New South Wales to forgo \$8 million to \$9 million worth of revenue a year and the same with Racing New South Wales. Their answer obviously is “No, go away. It is a 99-year agreement, locked in stone. We are not going to vary on that.”<sup>413</sup>
- 25.53 The Government’s current intent in regards to the distribution appears from the *Betting Tax Legislation Amendment Act 2015* (“Tax Harmonisation Act”) introduced into the Parliament in 2015. This Act apportions the additional revenue raised from tax harmonisation to the racing bodies on the following percentages:
- Greyhound Racing NSW: 10%
  - Harness Racing NSW: 12.7%
  - Racing NSW: 77.3%

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<sup>408</sup> PwC Report, p. 43.

<sup>409</sup> Select Committee First Report, p. 26.

<sup>410</sup> Ibid.

<sup>411</sup> Cameron Report pp. 103-104.

<sup>412</sup> Select Committee First Report, pp. 28-29.

<sup>413</sup> Ibid, p. 29.

- 25.54 Instead of basing the apportionment of extra funds on the amount each code contributes to the wagering market, it appears the Government based the figures in the Tax Harmonisation Act on the IER Report delivered in 2014 about the size and scope of the racing industry in NSW. The Government based its distributive percentages in the Tax Harmonisation Act on the 'Percentage of Industry Value Added' by the respective racing codes. The IER Report defines this category as "the value of sales less the value of inputs used in production, ie it is equal to the income (wages, salaries and profits) generated in production"; in other words, the amount of money each racing code contributes to the overall economy of NSW.<sup>414</sup> The percentages of 10% to GRNSW, 12.7% to HRNSW and 77.3% to Racing NSW appear to have been directly lifted from the IER Report. The implications of the Tax Harmonisation Act are discussed below.
- 25.55 Despite the inevitable opposition by the thoroughbred and harness racing industries to amending the ICD, and despite successive Governments' apparent lack of enthusiasm for a more equitable distribution, the Commission shares the view of Mr Cameron that, if the parties to the ICD and RDA cannot agree on equitable amendments, the Parliament should intervene and do so by legislation. The unfairness of the present arrangements is obvious. It has persisted for far too long to the disadvantage of the greyhound industry. The thoroughbred and harness racing industries are 'free riders' on the greyhound industry. They are the recipients of money which they have done nothing to earn.
- 25.56 It is the greyhound industry that expends the prize money and puts on the meetings that generate over 20% of the TAB distribution yet it receives only 13% of the distribution with the thoroughbred industry receiving 5.64% and the harness racing industry receiving 1.36% of money raised from wagering on greyhound racing. One of the justifications – perhaps the principal justification – for imposing RFIU Fees on wagering operators was that it was inequitable and unjust that they should have a 'free ride' on race meetings held by the racing codes and to which the operators contributed nothing. Similarly, it is inequitable and unjust that the other codes should have a 'free ride' on the greyhound industry and receive money which they have done nothing to earn.
- 25.57 All that can be said against amending the present arrangements is that GRNSW's predecessor voluntarily entered into those arrangements and that it would be an interference with the parties' freedom of contract to now change their bargain simply because the arrangements now operate to the disadvantage of GRNSW. However, freedom of contract no longer has the attraction it had in the 19<sup>th</sup> century. State and federal legislation now permit courts to re-make contracts that produce unjust or unconscionable results.<sup>415</sup> Public policy has changed since Sir George Jessel, MR, famously declared in 1875:
- ... if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice.<sup>416</sup>
- 25.58 Nowadays, courts frequently refuse to enforce contracts that they consider unjust and just as frequently remake them to remove the injustice.
- 25.59 The Commission recommends that, if the racing codes cannot agree on a more equitable distribution of TAB revenue, Parliament should legislate to amend the current arrangements by providing for a distribution that reflects each code's contribution to TAB revenue.

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<sup>414</sup> IER Report, p. 9.

<sup>415</sup> *Contracts Review Act 1980* (NSW); *Fair Trading Act 1987* (NSW); *Competition and Consumer Act 2010* (Cth).

<sup>416</sup> *Printing and Numerical Registering Co v Sampson* (1875) 19 Eq. 462 at 465.

## Implications of tax harmonisation

- 25.60 On 24 November 2015, the Tax Harmonisation Act came into effect. The legislation was introduced by the NSW Government to bring the tax rates on racing wagers in line with the rates in Victoria. The Minister for Racing, the Hon Troy Grant, announced the policy on 16 June 2015.<sup>417</sup> That announcement indicated that the tax rates would be lowered over a six year period until the NSW tax rates were equal with Victoria's, instead of more than double, which they were at that time. The Minister's announcement indicated that the reductions would begin on 1 January 2016 and outlined the scheduled decrease in tax rate. The announcement also indicated that, by the time the whole rate reduction was introduced, the racing industry overall would receive an extra \$85 million per year, with the portion for greyhound racing to be set aside pending the outcome of this Commission.
- 25.61 The Bill was read a second time on 11 November 2015. During the Second Reading Speech, the Minister indicated that a number of changes had been made to the legislation since the policy was announced in June 2015. Importantly, the legislation would be retrospective and take effect from 1 July 2015,<sup>418</sup> and the NSW Government forecasted that approximately \$90 million would be received by the racing industry per annum once the full reduction was realised in 2020.<sup>419</sup>
- 25.62 As noted above, another important aspect of the legislation is the apportionment of the funds to the three racing bodies. In August 2015, GRNSW had indicated that they expected to receive 13% of the apportionment, correlating with the apportionment of funds under the ICD.<sup>420</sup> However, the legislation disburses 10% of the additional funds to GRNSW.<sup>421</sup> In effect, based on the NSW Government's forecast of \$90 million per year in 2020, this means that GRNSW would receive approximately \$9 million per annum from 2020.
- 25.63 Based on the extra six months of increased returns, and the pushing forward by one year of the reduced tax rate timetable, the racing industry would receive more money sooner than indicated by the Minister in the announcement on 16 June 2015. The table set out below provides an estimate of what the racing industry, and in particular GRNSW, will receive each year from the tax harmonisation legislation.<sup>422</sup>

Year	Announced totalisator tax rate	Enacted totalisator tax rate	Announced fixed odds tax rate	Enacted fixed odds tax rate	Announced start of reduction	Enacted start of reduction	Announced money back to industry (\$m)	Updated money back to industry (\$m)	Amount to GRNSW p.a. (\$m)
FY15	19.1%		10.9%						
FY16	17.7%	16.2%	10.1%	9.2%	Jan-16	Jul-15	\$ 10	\$ 25	\$ 2.5
FY17	14.6%	13.5%	8.3%	7.4%	Jan-17	Jul-16	\$ 25	\$ 45	\$ 4.5
FY18	12.0%	12.2%	6.9%	6.6%	Jan-18	Jul-17	\$ 45	\$ 52	\$ 5.2
FY19	9.3%	10.7%	5.3%	5.8%	Jan-19	Jul-18	\$ 70	\$ 67	\$ 6.7
FY20	7.6%	7.6%	4.4%	4.4%	Jan-20	Jul-19	\$ 85	\$ 90	\$ 9.0

## Implication of changes to Race Field Information Use Fees

- 25.64 RFIU Fees were introduced after the NSW Parliament amended the *Racing Administration Act 1998*. This legislation allowed racing control bodies to charge wagering operators fees for using

<sup>417</sup> Article entitled "Tax parity to make NSW premier racing state" by Department of Justice, 16 June 2015, *NSW Government website*: <[http://www.justice.nsw.gov.au/Documents/Media%20Releases/2015/Racing/rel\\_grant\\_20150615-tax-parity-racing.pdf](http://www.justice.nsw.gov.au/Documents/Media%20Releases/2015/Racing/rel_grant_20150615-tax-parity-racing.pdf)> (accessed 23 May 2016).

<sup>418</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 11 November 2015 (Troy Grant).

<sup>419</sup> *Ibid.*

<sup>420</sup> In their instructions to Dr Rod Ferrier detailing its financial outlook for the financial years to FY2020. See GRNSW Submission 769 dated 24 August 2015, Annexure P, pp. 29, 33.

<sup>421</sup> *Betting Tax Legislation Amendment Act 2015* (NSW) Sch. 3.

<sup>422</sup> PwC Report, p. 42.

race field information prepared by the controlling bodies. RFIU Fees account for the majority of the remaining 28% of GRNSW's revenue.<sup>423</sup>

25.65 Until recent amendments to the *Racing Administration Regulation 2012*, the legislation set a cap for the fees at 1.5% of wagering turnover on relevant NSW races. GRNSW has been charging a 'hybrid model' of fees to operators which is based on the lesser of:

- 1.5% of turnover; or
- 15% of gross revenue with a minimum floor payment of 0.75% of turnover.<sup>424</sup>

25.66 The Select Committee received evidence from various parties advocating for an increase to the cap to allow racing authorities to increase their revenue, especially given the increasing presence of non-TAB wagering operators offering wagering on racing. For example, the Joint Industry Submission argued that the levy cap should be removed, and that such a change would have no ongoing impact on Government taxation income.<sup>425</sup>

25.67 In contrast, the Australian Wagering Council argued that any changes to the levy cap may "force wagering operators to 'turn their backs on NSW greyhound racing and not offer services'" and that the presence of offshore operators and 'illegal SP operators' would receive an advantage without contributing anything to the racing industry.<sup>426</sup>

25.68 GRNSW's then Chief Executive, Mr Hogan, rejected this argument by the Australian Wagering Council. He explained that a removal of the levy cap would actually result in the majority of extra revenue coming from interstate TABs rather than corporate bookmakers:

The reality is that the majority of the additional incremental revenue if the cap was removed, ... would actually be paid by interstate totalisators, not the corporate bookmakers. There are very few corporate bookmakers who are getting caught by the cap at present. Their margins are creeping up and I understand you would have had witnesses before you today from some of the larger corporates who have high margins, but the reality is the majority of that \$5.5 million that we were speaking about at the last hearing [projected additional revenue if the levy cap was removed] ... relates to additional payments, which would be made by interstate totalisators, not the corporates.<sup>427</sup>

25.69 In its Second Report, the Select Committee went on to recommend that:

The Minister for Hospitality, Gaming and Racing amend section 16 of the *Racing Administration Regulation 2012* in order to remove the legislated race field information use fee cap and allow a relevant racing control body to determine the fees for race field information use.<sup>428</sup>

25.70 The Select Committee's recommendation followed an expert report conducted by PwC which determined that the removal of the RFIU Fee cap "was the only scenario for which the financial modelling returned a cumulative positive effect on gross state product."<sup>429</sup> Additionally, the removal of the cap "had the least impact on NSW Government tax revenue."<sup>430</sup> The Select Committee noted that, if the RFIU Fee cap was removed, GRNSW could negotiate its own fees

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<sup>423</sup> PwC Report, p. 43.

<sup>424</sup> Select Committee First Report, p. 36.

<sup>425</sup> Ibid, p. 47.

<sup>426</sup> Ibid, p. 37.

<sup>427</sup> Ibid, p. 48.

<sup>428</sup> Select Committee Second Report, p. 14.

<sup>429</sup> Ibid, p. 13.

<sup>430</sup> Ibid, p. 13.

with wagering operators and allow market forces to determine the fees as “there is no role for government in managing or limiting” the decisions GRNSW makes.<sup>431</sup>

25.71 In 2015, the NSW Government amended the regulations capping what the racing industry bodies could charge for RFIU Fees. The announcement was made by the Racing Minister on 31 July 2015.<sup>432</sup> For the remainder of the 2015-2016 financial year, the old scheme will remain in place. However, GRNSW is no longer capped by the legislation with the result that it can charge the maximum amount allowable under the regulations, if it wishes to do so.

25.72 In the FY2016-2017, a new scheme will come into place following amendment of the *Racing Administration Regulation 2012* by the *Racing Administration Amendment (Race Field Information Fees) Regulation 2015*. The new scheme will see GRNSW able to charge up to 4% fees on turnover from totalisator derived odds and up to 2.5% fees on all other odds.<sup>433</sup>

25.73

25.74 GRNSW has not yet determined its RFIU Fee model for the next financial year under the new Regulations. Despite this, GRNSW has provided the Commission with its forecast revenue from RFIU Fees to FY2020 including income received from the new scheme. It forecasts annual income from RFIU Fees in FY2020 to be \$[REDACTED].<sup>435</sup>

## The Ferrier Report

25.75 As part of its Submission to this Commission, on 24 August 2015 GRNSW provided an expert report by Dr Rod Ferrier (“the Ferrier Report”) detailing the financial outlook for GRNSW during the financial years to FY2020.<sup>436</sup>

25.76 The Ferrier Report outlined GRNSW’s current position and considered a number of scenarios to assess its viability to FY2020 based on a number of changes to revenue which were, as at August 2015, unconfirmed. These changes in forecast revenue were based on GRNSW’s best estimates of changes to RFIU Fees and TAB distributions. The key conclusions Dr Ferrier reached in his Report on GRNSW’s financial sustainability were summarised by GRNSW in its Submission:

- GRNSW was not profitable on an operating basis in FY13, but that position improved in FY14 and FY15 as it returned to profitability. Dr Ferrier saw no evidence that GRNSW was not profitable at the levels of revenue and expenditure it experienced in FY15;
- GRNSW is solvent and with respect to the period he considered, Dr Ferrier saw no evidence that it was likely to become insolvent;
- Without additional revenue sources, GRNSW planned expenses in each of the financial years ending 30 June 2016 to 30 June 2020 would exceed its revenues for each of those years;

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<sup>431</sup> Select Committee Second Report, p. 14.

<sup>432</sup> Article entitled “Fairer race field fees” by Department of Justice, 31 July 2015, *NSW Government website*: <[http://www.justice.nsw.gov.au/Documents/Media%20Releases/2015/MR15-Troy\\_Grant\\_fairer\\_race\\_field\\_fees.pdf](http://www.justice.nsw.gov.au/Documents/Media%20Releases/2015/MR15-Troy_Grant_fairer_race_field_fees.pdf)> (accessed 23 May 2016).

<sup>433</sup> Article entitled “Fairer race field fees” by Department of Justice, 31 July 2015, *NSW Government website*: <[http://www.justice.nsw.gov.au/Documents/Media%20Releases/2015/MR15-Troy\\_Grant\\_fairer\\_race\\_field\\_fees.pdf](http://www.justice.nsw.gov.au/Documents/Media%20Releases/2015/MR15-Troy_Grant_fairer_race_field_fees.pdf)> (accessed 23 May 2016).

<sup>434</sup> GRNSW website, “GRNSW statement on tax harmonisation”: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7063>> (accessed 23 May 2016).

<sup>435</sup> PwC Report, p. 43.

<sup>436</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, Appendix P.

- The additional tax parity funds would enable GRNSW to meet both its budgeted expenditure AND its planned expenditure in the financial years ending 30 June 2018, 20 June 2019, and 30 June 2020 and leave it with cash surpluses at the end of each of those financial years; and
- Additional funding from ‘tax parity’ and from the ability of GRNSW to raise additional revenue through increasing the rate at which it can charge for race fields information use fees would enable GRNSW to meet budgeted expenditure AND its planned expenditure in each of the financial years in the period ending 30 June 2016 to 30 June 2020, and would leave it with substantial cash surpluses in those years.<sup>437</sup>

25.77 An important qualification to the conclusions reached by Dr Ferrier in points (d) and (e) is that they were based on assumptions GRNSW made at the time regarding tax harmonisation and potential changes to RFIU Fees.

25.78 Specifically, Dr Ferrier’s conclusions regarding the tax harmonisation measures assumed that GRNSW would receive 13% of any additional revenue the racing industry received from the changes.<sup>438</sup> However, when the legislation was passed in November 2015, it became apparent that GRNSW would only receive 10% of the additional revenue raised, which would significantly affect the assumptions in the Ferrier Report.<sup>439</sup> Similarly, the instructions to Dr Ferrier requested that he calculate the forecast increase in RFIU Fees under a different scheme to that which was actually introduced after the Report was written. The forecasts made by the Ferrier Report in regard to these two issues cannot therefore be regarded as reliable either as facts or estimates.

25.79 On 7 January 2016, after considering the financial forecasting received from GRNSW, the Commission engaged experts from PwC to conduct a review of the financial position of GRNSW. PwC were instructed to undertake the following analysis:

- Understand and comment on the Ferrier Report dated 20 August 2015 in relation to the profitability, solvency, liquidity and expenditure of GRNSW;
- Obtain GRNSW historical financial performance and conduct analysis on key movements in revenue, expenditure, gross profit and overheads;
- Understand and comment on GRNSW’s financial forecasts to 2020 together with the underlying assumptions used to develop these financial forecasts. Understand the basis for the assumptions and compare historical trends. Where appropriate identify vulnerabilities and apply sensitivities to these assumptions;
- Overlay the financial forecasts with the revenue impact of proposed legislation changes in future years;
- Obtain from GRNSW detail to support assumptions relating to expected increased expenditure on animal welfare in relation to structural changes in the greyhound racing industry and incorporate this additional expenditure in the financial forecasts;
- Obtain from the Crown Solicitor (and GRNSW) detail to support ongoing expense assumptions in relation to animal welfare expenditure.<sup>440</sup>

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<sup>437</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [615].

<sup>438</sup> Ibid, Annexure P, pp. 29, 33.

<sup>439</sup> *Betting Tax Legislation Amendment Act 2015* (NSW), Sch. 3.

<sup>440</sup> PwC Report, p. 5.

25.80 As noted in the PwC Report, the review has not been intended to constitute an examination of GRNSW's accounts to the standard of an audit. The Commission engaged PwC to analyse the Ferrier Report which was relied upon by GRNSW as part of its Submissions about GRNSW and the industry's financial viability.

25.81 The PwC Report identified a number of issues in relation to the forecast included in the Ferrier Report. They were:

- *Basis for development of forecast assumptions:* We note that the actual assumptions utilised for forecasting revenues do not consider the historical results and the excel 'forecast' function and are according to Dr. Ferrier developed based on a 'best guess' basis. The lack of a sound basis for development of assumptions through either discussions with GRNSW management or more comprehensive analysis of the historical performance results in an inaccurate representation of GRNSW future performance.
- *Revenue impacts of* [REDACTED]
- *'Blue Paws' expenses:* We note that the Ferriers report considers the expenses of Blue Paws during the forecast period, increasing at CPI. However, the corresponding revenues are not considered during the forecast period due to the discontinuance of the Blue Paws programme in FY15. The impact of this results in an overstatement of expenses during the forecast period and the understatement of forecasted profits.
- *Special Commission expenses:* We note that the Ferriers report considers the Special Commission expenses to grow during the forecasted period, increasing by CPI. We note that the expenses related to Special Commission should be classified as one-off in nature and not expected to be incurred beyond FY16. The impact of this is the overstatement of expenses during the forecast period and the understatement of forecasted profits.
- *Computation of interest income and expense:* We note that the interest income and the overdraft rate have been assumed to be 8.07%. While current interest rates for deposits range between 2.35% – 4%, the bank overdraft rates currently stand at c.9.5%. According to GRNSW management, interest rates applicable for GRNSW on their deposits range between 0.1% - 2.75%. Consequently interest income is significantly overstated in the forecast period.
- *Revised FY16 Budget:* We note that a revised revenue and expenses budget for FY16 has been prepared by GRNSW which differs significantly to that originally provided to Ferriers. Therefore, the current forecast is not reflective of the updated views of GRNSW.
- *Capex requirements:* We note that the actual forecast does not consider any capital expenditure. Based on our review of the annual reports during the period FY12– FY15, we note that GRNSW, as part of its function to develop the greyhound racing industry, undertakes capital expenditure on an annual basis. While we note that the Ferriers report highlights that no capital investment budget was provided by GRNSW, the exclusion of capital expenditure does not present a true financial position of GRNSW.

• [REDACTED]

<sup>441</sup>

25.82 PwC concluded:

[i]n our opinion the forecast prepared in the Ferrier's report contains a number of inappropriate assumptions and is based on inaccurate data. Consequently, it does not reflect a true and accurate

<sup>441</sup> PwC Report, p. 12.

view of GRNSW's future financial performance and therefore, cannot be used to assess GRNSW's sustainability.<sup>442</sup>

25.83 PwC noted that the Ferrier Report had restated the financial statements of GRNSW after making certain adjustments to them. PwC considered that the adjustments proposed by the Ferrier Report were not exhaustive. Its own analysis had identified a number of additional items that it thought had to be taken into account. They are referred to in the Table set out below which shows the difference between the approaches of the Ferrier Report and PwC. The reasons for the PwC adjustments are set out in its Report.<sup>443</sup> The Commission is of the view that the analysis of PwC concerning these adjustments and their effect on the financial statements is correct.

**Table 1: Reconciliation between EBIT per Ferriers report and PwC**

<b>\$</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>
EBIT per financial statements	4,504,703	(2,403,950)	3,597,684	1,888,653
Ferriers adjustments				
<i>International GST Recovery</i>	-	(652,610)	-	-
<i>Deferred revenue realised</i>	(6,913,157)	-	(2,846,211)	-
<i>NCA loan forgiven (Gardens purchase)</i>	2,100,000	-	-	-
<i>Investigation Four Corners</i>	-	-	-	1,373,924
<b>Ferriers adjustments total</b>	<b>(4,813,157)</b>	<b>(652,610)</b>	<b>(2,846,211)</b>	<b>1,373,924</b>
<b>EBIT per Ferriers report</b>	<b>(308,454)</b>	<b>(3,056,560)</b>	<b>751,473</b>	<b>3,262,577</b>
PwC adjustments				
1) <i>Product fees - PGI Agreement</i>	-	729,245	(729,245)	-
2) <i>Deferred revenue</i>	-	2,846,211	-	-
3) <i>Revenue from Playhouse Pet Motel</i>	-	-	-	(436,207)
4) <i>Infrastructure and IT costs from acquisition of The Gardens Property</i>	1,200,000	-	-	-
5) <i>Deferred infrastructure costs</i>	-	-	-	(500,000)
6) <i>Deferred drug detection tests</i>	-	-	-	(130,000)
7) [REDACTED]	-	-	-	[REDACTED]
<b>PwC adjustments total</b>	<b>1,200,000</b>	<b>3,575,456</b>	<b>(729,245)</b>	<b>(1,203,082)</b>
<b>PwC normalised EBIT</b>	<b>891,546</b>	<b>518,896</b>	<b>22,228</b>	<b>2,059,495</b>

25.84 The above conclusions regarding the Ferrier Report are not intended, and should not be read, as a criticism of Dr Ferrier or Ferrier's Practice Pty Ltd. This is owing to a number of factors:

- Dr Ferrier was constrained by the instructions he received from GRNSW. For example Dr Ferrier was asked to assume expenditure would increase in accordance with CPI rather than using actual forecasts;
- No detailed background was provided to Dr Ferrier regarding potential changes to revenue streams or expenses other than an outline as to GRNSW's predictions regarding tax harmonisation and RFIU Fee changes;
- Dr Ferrier produced his report within a very tight deadline. Instructions were received by Dr Ferrier on 11 August 2015, and he produced the final report to GRNSW on 20 August 2015; and

<sup>442</sup> PwC Report, p.12.

<sup>443</sup> Ibid, pp. 7-8.

- Dr Ferrier advises that he was allocated a limited budget for the exercise and provided with limited documents.
- 25.85 Owing to these circumstances, it is understandable that the report was not more accurate in its forecasts for GRNSW.
- 25.86 However, GRNSW should have indicated these potential limits and problems when submitting the Ferrier Report. Had the Commission not engaged PwC to scrutinise the Ferrier Report, the Commission would have been misled by GRNSW's Submission as to its true financial position.
- 25.87 GRNSW has submitted to the Commission that the PwC Report could not be relied upon, and that the Ferrier Report should be relied upon instead. The Commission rejects this submission owing to the problems associated with the Ferrier Report, and the comprehensive analysis undertaken by PwC.
- 25.88 PwC was instructed to, as far as possible, forecast GRNSW's financial position. This was complicated by the changing financial landscape affecting the industry (including the tax harmonisation and RFIU Fee changes outlined above) and the significant welfare research and reforms proposed by GRNSW during the period of the Commission's inquiries, with resultant actual and potential financial impacts. The financial information used by PwC in preparing its Report was obtained directly from GRNSW (where it was available) or, absent GRNSW's possession of the information, from other sources. Where issues or questions arose, PwC and the Commission consulted with GRNSW and Dr Ferrier to ensure the accuracy and proper treatment of the information provided.
- 25.89 GRNSW has also submitted that it is content to accept the conclusion made by PwC, that based on *current* forecasted revenue and expenditure, GRNSW will remain financially viable at least until to FY2020. The Commission accepts this submission by GRNSW.
- 25.90 It should also be noted that, on 3 June 2016, GRNSW provided the Commission with further financial forecasts based on a hypothetical decrease in race meetings from 891 per year, to 740 or 593 per year (593 is the minimum allowable under the RDA). The Commission does not consider the forecasts to be relevant. GRNSW has already finalised its plans for TAB race meetings to be held in FY17 and has released a draft of its race meeting plans for non-TAB race meetings. Under those plans there will be 891 total TAB race meetings in FY17. GRNSW's forecasts are also only based on 10 racing clubs (at present there are 34). This is a difficult proposition to accept when, at the same time, GRNSW has submitted that the Commission should not speculate about club reductions. For reasons discussed throughout this Report, the Commission remains convinced that, if the industry continues to operate, there will be substantial reductions in the numbers of clubs and tracks operating. The financial impact of this is discussed further in Chapter 26. GRNSW's 3 June 2016 financial forecasting also utilised their FY16 budget for re-assessment, a financial year that has almost concluded, including removing expenditure which has already been incurred.

25.91 Consequently, the Commission considers it appropriate to rely on the PwC Report to assist with the assessment of GRNSW's and the industry's current and future financial viability.

### Profitability considerations

25.92 PwC also recalculated the profitability ratios used in the Ferrier Report based on its view of GRNSW normalised EBIT. It concluded that, after it made the necessary adjustments, GRNSW was profitable between FY12 and FY15.<sup>444</sup>

**Table 2: Profitability indicators compared**

<b>Profitability indicators</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>
EBIT/Operating revenue				
<i>Per Ferriers Report</i>	-0.75%	-7.85%	1.66%	6.75%
<i>Per PwC</i>	2.17%	1.22%	0.05%	4.30%
Operating expenses/operating revenue				
<i>Per Ferriers Report</i>	100.75%	107.85%	98.34%	93.25%
<i>Per PwC</i>	97.83%	98.78%	99.95%	95.70%
EBIT/Average Equity				
<i>Per Ferriers Report</i>	-2.50%	-22.15%	5.13%	18.59%
<i>Per PwC</i>	11.94%	3.76%	0.15%	11.76%
Surplus/Average Equity				
<i>Per Ferriers Report</i>	41.07%	-15.29%	25.97%	11.45%
<i>Per PwC</i>	-24.80%	10.62%	1.56%	4.60%

25.93 In its Table 3, PwC also examined the profitability of GRNSW based on racing activities and concluded that they were profitable for the years FY12 to FY15. PwC noted, however, that overheads and indirect costs had been increasing from FY12 to FY15 and that in FY14 the overheads/indirect costs had exceeded operating profits from racing activities, resulting in an overall loss to GRNSW.<sup>445</sup>

<sup>444</sup> PwC Report, p. 8.

<sup>445</sup> Ibid, p. 9.

**Table 3: GRNSW Profitability**

\$	FY12	FY13	FY14	FY15
<b>Revenue</b>				
TAB Distributions	30,704,497	30,448,406	32,018,231	34,020,554
Race Field Information Use Fees	8,905,038	6,734,242	11,341,362	12,235,588
Race Form	455,105	479,309	322,382	258,105
Licensing & Registration Fees	415,187	594,133	732,415	739,120
Vet Servs, Blue Paws, GAP	317,777	409,044	486,308	496,609
Marketing & Digital	144,818	152,520	120,419	116,234
Fines & Penalties	27,078	38,748	56,591	31,955
Normalization adjustments:				
<i>Deferred revenue</i>	-	2,846,211	-	-
<i>Product fees - PGI Agreement</i>	-	729,245	(729,245)	-
<b>Operating Revenue from racing activities</b>	<b>40,969,500</b>	<b>42,431,858</b>	<b>44,348,463</b>	<b>47,898,165</b>
<b>Expenditure</b>				
Racing and club infrastructure	(3,172,681)	(1,465,417)	(2,012,517)	(980,366)
Depreciation, impairment, loss on sale	(392,426)	(318,011)	(298,716)	(370,693)
Prizemoney & Race Club Costs	(29,625,412)	(30,508,353)	(31,907,926)	(31,695,838)
Stewarding, integrity auditor	(2,267,421)	(2,446,418)	(2,387,785)	(2,416,282)
Drug Detection	(964,092)	(1,040,200)	(1,227,731)	(1,182,551)
Grading & Member Services	(539,345)	(827,316)	(1,079,775)	(1,462,049)
Vet Servs, animal welfare, Blue Paws, GAP	(925,827)	(1,140,966)	(1,309,908)	(1,954,733)
Normalisation adjustments:				
<i>Infrastructure &amp; IT cost</i>	1,200,000	-	-	-
<i>Deferred infrastructure costs</i>	-	-	-	(500,000)
<i>Deferred drug detection costs</i>	-	-	-	(130,000)
<b>Operating Expenditure from racing activities</b>	<b>(36,687,204)</b>	<b>(37,746,681)</b>	<b>(40,224,358)</b>	<b>(40,692,512)</b>
<b>Operating Profit from Racing Activities</b>	<b>4,282,296</b>	<b>4,685,177</b>	<b>4,124,105</b>	<b>7,205,653</b>
Other income	71,474	102,280	68,945	25,032
Overheads and other indirect costs	(3,462,224)	(4,268,561)	(4,170,822)	(5,171,190)
<b>EBIT</b>	<b>891,546</b>	<b>518,896</b>	<b>22,228</b>	<b>2,059,495</b>
<b>Operating Profit (%)</b>	<b>10.45%</b>	<b>11.04%</b>	<b>9.30%</b>	<b>15.04%</b>

## Solvency

25.94 PwC used the debt to equity ratio and total debt to total assets ratio to assess the solvency of GRNSW. As PwC's Table 4 shows, the solvency position of GRNSW deteriorated in FY14 but improved marginally in FY15.

**Table 4: GRNSW Solvency**

\$		FY12	FY13	FY14	FY15
Current Liabilities	→	8,267,443	13,946,596	5,843,565	7,193,986
Non-current liabilities	→	-	-	81,200	81,432
<b>Total Liabilities</b>	<b>→</b>	<b>8,267,443</b>	<b>13,946,596</b>	<b>5,924,765</b>	<b>7,275,418</b>
Equity	→	14,853,606	12,743,708	16,547,884	18,463,541
Total assets	→	23,121,049	26,690,304	22,472,649	25,738,959
Total Debt to Equity ratio	→	0.56	1.09	0.36	0.39
Total Debt to Total Assets ratio	→	0.36	0.52	0.26	0.28

## Liquidity

- 25.95 PwC found that the liquidity of GRNSW was robust when tested on the standard current and quick ratios. In applying these ratios, PwC excluded receivables due from the Wentworth Park Trust of \$6.5 million which PwC thought was unlikely to be fully collected in the short term. The Ferrier Report had included this sum in determining GRNSW's liquidity. Despite excluding the sum of \$6.5 million, current and quick ratios were strong at 208% and 200% respectively at 30 June 2015 (by including the \$6.5 million figure, the Ferrier Report had calculated ratios of 307% and 330%, respectively).
- 25.96 PwC also examined the cash ratio which refined the current and quick ratio of GRNSW by assessing its ability to pay current liabilities with only cash and cash equivalents. PwC thought that the cash ratio (which had not been considered by Dr Ferrier) was a more appropriate measure to assess GRNSW's liquidity given the delay in converting revenue from Tabcorp into cash. Use of the cash ratio showed that GRNSW's liquidity position has decreased in FY14 and FY15 from a high point in FY13. PwC expressed the view that GRNSW may have liquidity constraints if the level of cash buffer keeps decreasing and management maintains the current long collection terms with Tabcorp. It appears however that Tabcorp and GRNSW have now agreed on a mechanism that will eliminate or at least reduce disputes between them thereby converting revenue to cash quicker than in the past.
- 25.97 PwC set out its calculations in Table 5 of its Report.

**Table 5: GRNSW Liquidity ratio**

\$	FY12	FY13	FY14	FY15
<b>Current Assets</b>				
Cash and cash equivalents	4,400,966	8,463,821	897,286	2,082,467
Receivables	10,114,166	9,721,758	10,801,394	12,330,336
Financial assets	-	-	-	275,000
Other current assets	4,175	675	110,136	263,491
<b>Total Current Assets</b>	<b>14,519,307</b>	<b>18,186,254</b>	<b>11,808,816</b>	<b>14,951,294</b>
<b>Current Liabilities</b>				
Deferred revenue	-	7,648,112	-	-
Payables	6,787,571	5,186,645	4,781,298	6,671,463
Provisions	1,479,872	1,111,839	1,062,267	522,523
<b>Total Current Liabilities</b>	<b>8,267,443</b>	<b>13,946,596</b>	<b>5,843,565</b>	<b>7,193,986</b>
Current ratio	1.76	1.30	2.02	2.08
Quick ratio	1.76	1.30	2.00	2.00
Cash ratio	0.53	0.61	0.15	0.29

## Profit and Loss account

- 25.98 PwC's analysis of the financial performance of GRNSW was based on the reported numbers in the Ferrier Report adjusted by the abnormal and non-operating adjustments which PwC identified.<sup>446</sup> PwC's Table 16 shows the result of these adjustments.<sup>447</sup>

<sup>446</sup> PwC Report, p. 25.

<sup>447</sup> Ibid, p. 26.

**Table 16: Adjusted P&L**

\$	FY12	FY13	FY14	FY15
<b>Revenue</b>				
TAB Distributions normalised	30,704,497	31,177,651	31,288,986	34,020,554
Race Field Information Use Fees normalised	8,905,038	9,580,453	11,341,362	12,235,588
Race Form	455,105	479,309	322,382	258,105
Licensing & Registration Fees	415,187	594,133	732,415	739,120
Vet Servs, Blue Paws, GAP normalised	317,777	409,044	486,308	496,609
Marketing & Digital	144,818	152,520	120,419	116,234
Other income	71,474	102,280	68,945	25,032
Fines & Penalties	27,078	38,748	56,591	31,955
<b>Operating Revenue</b>	<b>41,040,974</b>	<b>42,534,138</b>	<b>44,417,408</b>	<b>47,923,197</b>
<b>Expenditure</b>				
Racing and club infrastructure normalised	(1,972,681)	(1,465,417)	(2,012,517)	(1,480,366)
Depreciation, impairment, loss on sale	(392,426)	(318,011)	(298,716)	(370,693)
Prizemoney & Race Club Costs	(29,625,412)	(30,508,353)	(31,907,926)	(31,695,838)
Stewarding and integrity expenses	(3,770,858)	(4,313,934)	(4,695,291)	(5,190,882)
Vet Servs, animal welfare, Blue Paws, GAP	(925,827)	(1,140,966)	(1,309,908)	(1,954,733)
Administration and other	(3,462,224)	(4,268,561)	(4,170,822)	(5,171,190)
<b>Operating Expenses</b>	<b>(40,149,428)</b>	<b>(42,015,242)</b>	<b>(44,395,180)</b>	<b>(45,863,702)</b>
<b>Adjusted EBIT</b>	<b>891,546</b>	<b>518,896</b>	<b>22,228</b>	<b>2,059,495</b>
Interest	556,102	294,052	206,492	120,243
<b>Adjusted Loss/Surplus for the Year</b>	<b>1,447,648</b>	<b>812,948</b>	<b>228,720</b>	<b>2,179,738</b>
Abnormal/Non operating items	(3,300,000)	652,610	-	(1,373,924)
<b>Loss/Surplus for the Year</b>	<b>(1,852,352)</b>	<b>1,465,558</b>	<b>228,720</b>	<b>805,814</b>

## Cash flow statement

25.99 PwC also provided a Cash Flow statement which is set out in its Table 19.<sup>448</sup> It shows GRNSW's normalised cash flow position in FY13, FY14 and FY15 after PwC adjusted GRNSW's reported cash flows for certain specific items.

<sup>448</sup> PwC Report, p. 32.

**Table 19: Normalised cash flow**

<b>Cash flow (\$)</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>
Normalised EBIT	518,896	22,228	2,059,495
D&A	(318,011)	(298,716)	(370,693)
<b>Normalised EBITDA</b>	<b>200,885</b>	<b>(276,488)</b>	<b>1,688,802</b>
Working capital changes	(1,573,051)	(1,644,016)	(606,876)
Var. WC - Current assets	395,908	(1,189,097)	(1,957,297)
Var. WC - Current liabs	(1,968,959)	(454,919)	1,350,421
<b>Normalised CF from operations</b>	<b>(1,372,166)</b>	<b>(1,920,504)</b>	<b>1,081,926</b>
Capex	485,703	(215,797)	58,505
<b>Normalised free cash flows</b>	<b>(886,463)</b>	<b>(2,136,301)</b>	<b>1,140,431</b>
Other non current assets	(70,000)	(48,800)	188,588
Interest	294,052	206,492	120,243
<b>Normalised net cash flow</b>	<b>(662,411)</b>	<b>(1,978,609)</b>	<b>1,449,262</b>
Initial cash	4,400,966	8,463,821	897,286
Closing cash	8,463,821	897,286	2,082,467
<b>Cash movement per Balance sheet</b>	<b>4,062,855</b>	<b>(7,566,535)</b>	<b>1,185,181</b>
<b>Variance - movement of normalised net cash flow and closing cash per Balance sheet</b>	<b>4,725,266</b>	<b>(5,587,926)</b>	<b>(264,081)</b>
<b>Normalisation adjustments</b>			
<i>Deferred revenue - Balance sheet</i>	(7,648,112)	7,648,112	
<i>Deferred revenue - GRNSW portion</i>	2,846,211	(2,846,211)	
<i>PGI Revenue</i>	729,245	(729,245)	
<i>Revenue from Playhouse Pet Motel</i>			(436,207)
<i>Deferred infrastructure costs</i>			(500,000)
<i>Deferred drug detection tests</i>			(130,000)
<i>CEO's Salary (Feb-June)</i>			(136,875)
<b>Abnormal items</b>			
<i>International GST Recovery</i>	(652,610)	-	-
<i>Acquisition of Playhouse Pet Motel</i>	-	1,515,270	
<i>Investigation - Four corners</i>	-	-	1,373,924
<i>Unreconciled differences</i>			93,239
<b>Total adjustments</b>	<b>(4,725,266)</b>	<b>5,587,926</b>	<b>264,081</b>

25.100 PwC was not provided with historical cash flow information by GRNSW. Consequently, the analysis in the above table was calculated using the balance sheet and profit and loss account included in the Ferrier Report, adjusted by the following abnormal and non-recurring items.<sup>449</sup>

25.101 Normalisation adjustments were:

Deferred revenue: This adjustment removes the impact on the cash flow of the movements of the deferred revenue balances. In addition, the \$2.8m revenue recognised in FY14 but in relation to activity in FY13, have been incorporated into FY13 and deducted from the FY14 EBIT.

Product fees of \$729k from the PGI agreement were recognised in FY14 but related to activity in FY13, and have therefore been reflected in FY13 and deducted from FY14 EBIT.

<sup>449</sup> PwC Report, p. 32.

Revenue from the Playhouse Pet Motel of \$436k is not expected to occur going forward and therefore we have deducted it from the normalised FY15 EBIT.

Infrastructure and IT costs amounting to \$500k deferred into FY16 have been included in the FY15 EBIT.

Drug detection costs amounting to \$130k deferred from into FY16 have been included in the FY15 EBIT.

Unpaid salary of the CEO's for the period Feb-June 2015 have been included in the FY15 EBIT.<sup>450</sup>

#### 25.102 Abnormal items adjusted were:

FY13: [PwC] removed the one-off revenue recognised in relation to the international GST Recovery. ...

FY14: [PwC] deducted the \$1.5m capex investment attributable to the acquisition of the Playhouse Pet Motel.

FY15: [PwC] excluded the \$1.3m one-time costs related to legal costs incurred in response to the Four Corners investigation.<sup>451</sup>

25.103 After the adjustments identified above were made to the Cash Flow statement, it showed GRNSW had a positive EBITDA over the historical period. However, it generated negative net cash flows in FY13 and FY14. The chief cause of these negative flows was a large working capital requirement as a result of long collection terms with Tabcorp and the capex requirements of the business.

### Impact of legislative changes

25.104 By the time PwC commenced its review, GRNSW had changed its forecasts for FY16 from the forecasts that were the basis of the Ferrier Report. Furthermore, the Parliament of NSW enacted legislation whose effect is to increase the revenue available to GRNSW.

25.105 GRNSW's revenue is derived from two main sources: TAB distributions and RFIU Fees. The NSW Government enacted the following changes to both of these funding streams resulting in higher funds money being provided to the three racing codes in NSW including GRNSW.

### Tax Harmonisation

25.106 As noted above, on 24 November 2015, the NSW Government passed the Tax Harmonisation Act, with the effect that the tax rates applicable to totalisators and fixed odds wagering providers will be gradually reduced to match the Victorian rates by 2020.

25.107 PwC noted that, under the Tax Harmonisation Act, none of the extra revenue derived from the Act is to be retained by TAB Limited, but instead is passed onto the three racing codes in NSW including GRNSW. The Tax Harmonisation Act sets out that GRNSW will receive 10% of the allocation of the extra funds.

### RFIU Fees

25.108 On 31 July 2015, the NSW Government announced changes to the cap on RFIU Fees.

25.109 Previously, the fees were capped at 2% on turnover of premium race meetings and 1.5% on all other race meetings. The new regulation allows GRNSW to charge fees up to 4% of turnover

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<sup>450</sup> PwC Report, p. 33.

<sup>451</sup> Ibid.

from operators using totalisator derived odds and up to 2.5% of turnover from all other operators.

## Estimation of tax harmonisation benefits

25.110 In order to estimate the potential updated monetary benefit obtained by the greyhound industry and GRNSW in FY18 and FY19, PwC adopted the following methodology:

- **Step 1:** The difference (%) between the announced tax rates and the enacted tax rates were computed individually for both totalizators and fixed odds.
- **Step 2:** The excel built in 'forecast' function was applied to compute the quantum of benefit arising from the difference in totalizators and fixed odds (obtained from Step 1 above) considering the data provided for FY16, FY17 and FY20 as known variables. The Forecast function utilises known variables and linear regression to compute forecasted/unknown values.
- **Step 3:** The amount obtained using the Forecast function for totalizator and fixed odds reflect the potential benefit/payment that would impact the industry as a result of the revision of the rates.
- **Step 4:** This amount obtained from Step 3 above was then deducted/added from the amount announced earlier as benefit to the industry to arrive at the updated money that the greyhound industry would receive.
- **Step 5:** 10% of the updated amount has been computed which amounts to the benefit that GRNSW would receive from the revised taxation impact.

25.111 PwC said that, while the methodology adopted provided an estimate of the potential benefits available to the greyhound industry and to GRNSW from the application of revised tax rates, it could give no assurance on the accuracy of the actual benefits to the greyhound industry and to GRNSW resulting from the revised tax rates. However, based on the above methodology, the following tax harmonisation benefits could be expected by the greyhound industry:

**Table 23: Tax harmonization benefits to the greyhound industry and GRNSW**

Announced totalisator tax rate	Enacted totalisator tax rate	Announced fixed odds tax rate	Enacted fixed odds tax rate	Announced start of reduction	Enacted start of reduction	Announced money back to industry (\$m)	Updated money back to industry (\$m)	Amount to GRNSW p.a. (\$m)
19.1%		10.9%						
17.7%	16.2%	10.1%	9.2%	Jan-16	Jul-15	10	25	3
14.6%	13.5%	8.3%	7.4%	Jan-17	Jul-16	25	45	5
12.0%	12.2%	6.9%	6.6%	Jan-18	Jul-17	45	52	5
9.3%	10.7%	5.3%	5.8%	Jan-19	Jul-18	70	67	7
7.6%	7.6%	4.4%	4.4%	Jan-20	Jul-19	85	90	9

## Tax harmonisation impact on GRNSW

25.112 As a result of tax harmonisation, GRNSW should receive amounts as depicted in Table 23. The financial impact of the benefits obtained from the tax harmonisation is as follows:

**Table 24: Tax harmonization impact on GRNSW**

\$	FY16	FY17	FY18	FY19	FY20
Operating revenue	53,156,732	53,517,158	54,140,092	54,794,777	55,489,011
Tax harmonisation benefit	2,500,000	4,500,000	5,200,000	6,700,000	9,000,000
<b>Adjusted operational revenue</b>	<b>55,656,732</b>	<b>58,017,158</b>	<b>59,340,092</b>	<b>61,494,777</b>	<b>64,489,011</b>
Operational expense	(53,653,671)	(50,380,380)	(51,345,062)	(52,439,173)	(53,364,573)
<b>EBIT</b>	<b>2,003,061</b>	<b>7,636,778</b>	<b>7,995,030</b>	<b>9,055,604</b>	<b>11,124,439</b>
<i>Operating profit margin</i>	<i>4%</i>	<i>13%</i>	<i>13%</i>	<i>15%</i>	<i>17%</i>

25.113 The tax harmonisation benefits result in EBIT levels and operating profit margins for GRNSW to increase to sustainable levels.

### **RFIU changes impact on GRNSW**

25.114 According to the revised *Racing Administration Regulation*, GRNSW is entitled to charge up to 4% of a wagering operator's turnover in respect of wagering turnover derived from wagers laid by the wagering operator at totalisator derived odds; and up to 2.5% of the wagering operator's wagering turnover in respect to wagering turnover derived from wagers laid by the wagering operator at odds other than totalisator derived odds.

25.115 PwC noted that the revised forecasts provided by GRNSW

25.116 As an alternative scenario for analytical purposes, PwC considered

### **Conclusion on impact of legislative changes**

25.117 It is evident that the legislative changes have a positive impact on GRNSW with EBIT levels and the operating profit margins improving significantly. However,

## Basis of development of forecasts

25.118 In its Report, PwC noted that the GRNSW amended forecasts were prepared by GRNSW management on a bottom-up approach, incorporating individual assumptions to each account of the income statement and considering the number of races to be held during each season.<sup>452</sup> According to GRNSW management, revenue was forecast on historical trends in wagering revenue and recent developments including the change in the RFIU Fee cap. Cost forecasts were developed based on the new organisational structure. Increases in employment and associated administration costs were based on reform initiatives identified and in progress. They were costed on information currently available.

## Assumptions utilised in developing forecasts

25.119 Set out below are the assumptions that GRNSW management informed PwC that it had made in developing its forecasts for the period FY16-FY20.

## Revenue

### TAB Distributions

25.120 Historically, TAB distributions, on a CAGR [compounded annual growth rate] basis grew by 3.48% between FY12-FY15. PwC said GRNSW management expected [REDACTED]

[REDACTED] There was also a downward trend in wagering activity with punters shifting from pari-mutuel betting to fixed odds and corporate bookmaker offerings where GRNSW does not receive the same level of return from turnover on fixed odds betting through TAB when compared to pari-mutuel betting.

25.121 GRNSW management is currently planning to reduce the number of clubs. PwC said management expects the reduction in clubs will have no impact on the attractiveness of the greyhound races and therefore no decline in wagering revenue is considered in the forecast.<sup>454</sup>

### RFIU fees

25.122 Between FY12 and FY15, RFIU Fee income, on a CAGR basis, grew by 11.17% reflecting the move by punters from pari-mutuel betting to fixed odds.

25.123 According to the revised *Racing Administration Regulation*, GRNSW is entitled to charge up to 4% of a wagering operator's turnover in respect of wagering turnover derived from wagers laid by the wagering operator at totalisator derived odds; and up to 2.5% of the wagering operator's wagering turnover in respect to wagering turnover derived from wagers laid by the wagering operator at odds other than totalisator derived odds.

25.124 GRNSW considers that, as the result of the revised *Racing Administration Regulation* and its right to impose fees to the maximum cap, RFIU Fees [REDACTED]

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<sup>452</sup> PwC Report, p. 35.

<sup>453</sup> Ibid, p. 36.

<sup>454</sup> Ibid.

<sup>455</sup> Ibid.

### ***Race form***

25.125 Race form fees declined, on a CAGR basis, by 17% between FY12 and FY15. PwC said [REDACTED]

### ***Licensing and Registration fee income***

25.126 Between FY12 and FY15, licensing and registration fee income, on a CAGR basis, grew by 21% primarily due to the introduction of new fees and higher breeding activity. [REDACTED]

### ***Animal welfare related income***

25.127 Animal welfare related income, on a CAGR basis, increased by 16% between FY12 and FY15, primarily due to the increased focus of GRNSW in animal welfare programmes such as Greyhounds As Pets (“GAP”), Blue Paws and veterinary services. With the discontinuation of the Blue Paws programme in FY15, animal welfare related income from FY16 onwards will comprise only income obtained from veterinary services and GAP. GRNSW management forecast an approximately 35.8% increase in FY16 compared to FY15 largely due to the projected \$235k revenue from the Playhouse Pet Motel: the GRNSW facility which housed the GAP program, as well as undertaking commercial operations. However, the Playhouse Pet Motel facility is expected to cease commercial operations on 30 June 2016, operating from that date solely for the GAP program’s operations. Accordingly, GRNSW management said that no revenue derived from commercial operations at the facility was included in the forecast from FY17 onwards. Excluding the revenue from the Playhouse Pet Motel, income obtained from veterinary services and the GAP programme was projected to decline by 11.6% in FY16 mainly because the Blue Paws programme would cease in June 2015.

## **Expenses**

### ***Racing and infrastructure costs***

25.128 Between FY12 and FY15, racing and infrastructure costs have ranged between \$2 million and \$1.5 million. GRNSW management expects an approximately 54% increase in racing and club infrastructure expenses because of enhancements and upgrades to the OzChase system, installed initially in June 2012. After FY16, based upon the historical cost of maintenance and improvements to race tracks, management expects to incur an annual cost of \$1.55 million for racing and club infrastructure until FY20.

### ***Depreciation***

25.129 GRNSW management has been increasing the figure for depreciation by about \$100k annually between FY16 and FY20 because of the estimated capital improvements amounting to \$1 million required at the Playhouse Pet Motel facility which has an estimated useful life of 10 years.

### ***Prize money and clubs***

25.130 The forecast for prize money payout assumes that GRNSW will retain the forecasted increase in revenue and will not pass it through to race participants. Furthermore, as part of the animal welfare measures adopted by GRNSW, management is planning a reduction in prize money of between 4% and 10% to contribute towards animal welfare schemes.

### ***Administration and other overheads***

- 25.131 Finance and Corporate Overheads are expected to increase by 42% (\$1.16 million) in FY16 because of an increase in employees in finance, people and culture, and legal and policy areas of employment. One-off costs amounting to approximately \$200k have been budgeted in recruitment costs for senior positions to be filled within the organisation. In addition, overheads costs were understated in FY15 because the full year salary of the CEO was not incurred as a result of his termination in light of the 'live baiting' scandal in February 2015.
- 25.132 IT costs are expected to increase by 132% (\$853k) in FY16, primarily due to the one-off upgrade to the existing OzChase system. The IT costs are expected to decline by approximately 20% in FY17, as the one off costs in FY16 are not expected to reoccur in FY17. Subsequent to FY17, IT costs are expected to grow at 1.5% annually.
- 25.133 Marketing and events costs are expected to decline by 12% in FY16 reflecting savings from the cessation of the greyhound of the year award. Between FY17 and FY20, marketing and events costs are expected to increase by 1% consistently reflecting the routine marketing activities undertaken to promote greyhound racing.
- 25.134 Board expenses are expected to increase by approximately 79% in FY16, with amounts totalling about \$100k reflecting a full year of Board costs (the Board was stood down in February 2015). Subsequently, Board expenses are expected to increase by 3% per annum between FY17 and FY20 forecasted in line with CPI.
- 25.135 Other expenses primarily include Special Commission costs which are one off expenses and are not expected to be incurred from FY17 onwards.

### ***Stewards and integrity costs***

- 25.136 Stewarding costs are expected to increase in FY16 by 19% (\$463k) compared to the 2.14% CAGR growth witnessed between FY12 and FY15 reflecting additional employment costs incurred within compliance, intelligence and investigative teams to enhance animal welfare mechanisms. Subsequent to FY16, stewarding and integrity costs are expected to increase until FY20 reflecting the continued focus of GRNSW in improving animal welfare mechanisms.
- 25.137 Drug detection expenses amounting to approximately \$130k relate to drug detection costs incurred in FY15 but expensed to FY16. According to GRNSW management, a certain number of drug detection tests, undertaken in FY15, were only completed in FY16, due to operations being halted as the result of announcement of this Commission. From FY17 onwards, drug detection tests are expected to increase by about 10% annually reflecting the increased emphasis on drug detection measures adopted by GRNSW.

### ***Sensitivity analysis***

- 25.138 PwC calculated sensitivities to understand vulnerabilities in certain key parameters of GRNSW and their corresponding impact on EBIT.

### ***TAB Distributions***

- 25.139 As highlighted in GRNSW's FY15 Annual Report, trends are emerging where punters are shifting from pari-mutuel betting to fixed odds and corporate bookmaker offerings. The level of return achieved by GRNSW on turnover on fixed odds betting through TAB is lower than that received on pari-mutuel betting
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[Redacted]

[Redacted]

[Redacted]

*RFIU fees*

25.141

[Redacted]

[Redacted]

25.142

[Redacted]

25.143 PwC highlighted

25.144 PwC noted that

25.145

### Conclusion on GRNSW financial forecasts

25.146 PwC said that, in its opinion, the forecast prepared in the Ferrier Report contained a number of inappropriate assumptions and was based on inaccurate data. Consequently, it did not reflect a true and accurate view of GRNSW's future financial performance and therefore, could not be used to assess GRNSW's sustainability.

25.147 However, PwC accepted that the revised forecasts of GRNSW were reasonable. It said that, in its opinion, the basis on which the forecasts were prepared by GRNSW management was sound with a bottom-up approach incorporating individual assumptions for each item of the income statement after considering the number of races to be held during each season. PwC noted that revenue and expenses had been estimated conservatively. It said that

While EBIT was expected to be negative in FY16 because of 'one-off' expenses related to the implementation of the OzChase system and the costs arising from the 'live baiting' scandal, PwC said. That as operations normalise, both EBIT and operating margin were projected to improve in FY17. From FY18 onwards, EBIT and operating margin was projected to decline due to higher increase in operating expenses as compared to revenue. Nevertheless GRNSW was projected to remain profitable during the period.

### Recommendation

64. If the racing codes cannot agree on a more equitable distribution of TAB revenue, the Parliament of New South Wales should legislate to amend the current arrangements by providing for a distribution that reflects each code's contribution to TAB revenue.

## 26 Economic sustainability: impact of additional welfare spending – track rationalisation and “Centres of Excellence”

### Track rationalisation

#### Background

26.1 In its August 2015 Submission to the Commission, GRNSW indicated that it plans to reduce the number of greyhound racing clubs across the State. This has the potential to be the most economically transformative of all their announced future strategies, especially in terms of GRNSW’s financial viability.

#### The Strategic Plan to Reform the Greyhound Racing industry

26.2 To raise standards and meet the needs of the industry as well as public expectations, GRNSW “intends to forge a new pathway for greyhound racing and introduce a measured Strategic Approach that will transform the way that the sport is delivered in NSW.”<sup>456</sup> GRNSW engaged the accounting firm, KPMG, to assist it in developing a Strategic Plan for this purpose.<sup>457</sup> In August 2015, KPMG produced a report for GRNSW – *Articulating the Way Forward* (“KPMG Report”), which is the source of its Strategic Plan.

26.3 Under the Strategic Plan, GRNSW is proposing to make significant structural changes in the industry, principally by replacing the existing 34 greyhound tracks with Centres of Excellence consisting of probably 10 to 14 tracks. GRNSW informed the Commission that its “initial analysis identified that no less than 10 to 14 clubs are required to meet the NSW regional demographic and race meet requirements in NSW. The low range of 10 clubs is based on the requirement to meet current racing expectations and the demand for a range of racing and availability of local greyhounds. The high range of 14 clubs is based on the density of participants, travel time and nomination flows...”<sup>458</sup> The 10 to 14 clubs will become COEs.

26.4 KPMG informed GRNSW that it estimated that a range of 6 to 11 clubs would be supportable based on its “initial analysis of GRNSW’s existing financial constraints and estimates provided by GRNSW of the revenue and costs required to maintain revised club standards and prize money targets”.<sup>459</sup> To support 10 to 14 clubs, however, would produce a funding gap of between \$3.9 million and \$7.8 million from the current supportable range of 6 to 11 clubs.<sup>460</sup> The KPMG Report contained the disclaimer that “Animal Welfare and Integrity is out of scope for the purposes of this document.”<sup>461</sup> Going forward, animal welfare and integrity costs will be significant. In its Submission, GRNSW recognised that “in order to develop and position NSW Greyhound clubs as Centres of Excellence, GRNSW needs to secure or substantial additional

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<sup>456</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [598].

<sup>457</sup> Ibid, [597].

<sup>458</sup> Ibid, [553].

<sup>459</sup> Ibid, [555].

<sup>460</sup> Ibid, [556].

<sup>461</sup> KPMG Report, p. 4.

revenue.” It stated that, while its financial position would improve in the future, its “funds will be prioritised to improve integrity and animal welfare outcomes and would not be sufficient to fund the optimised club network.”<sup>462</sup>

26.5 Under the high range scenario of 14 clubs, clubs would be allocated in the following numbers to the following regions:<sup>463</sup>

- Central West: 2 Clubs;
- Hunter: 3 Clubs (including Gosford);
- Illawarra/South Coast: 2 Clubs;
- Metro/Sydney: 2 Clubs;
- Mid North Coast: 1 Club;
- New England: 1 Club;
- Northern Rivers: 2 Clubs; and
- Riverina: 1 Club.

26.6 GRNSW informed the Commission that it:

believes that developing and positioning NSW Greyhound clubs as Centres of Excellent [sic] will ensure:

- (a) an optimal number of clubs in NSW are located according to participant and demographic requirements and will cover all race types removing differences between TAB and non-TAB;
- (b) clubs are run by managers who have the business and commercial acumen required to successfully run the facility;
- (c) tracks will operate a high standard of greyhound safety, racing technology, operational equipment and available public facilities;
- (d) clubs have diversified revenue stream to reduce reliance on GRNSW funding allocations to operate; and
- (e) clubs will be able to leverage community backing and receive regular investment and support from local councils.<sup>464</sup>

26.7 GRNSW estimates that it will incur additional infrastructure costs of \$8.513 million to convert a track to a ‘one turn’ track and \$10.713 million to convert a track into a ‘two turn’ track. These costs will be incurred over the next 20 years.<sup>465</sup>

26.8 Of the 34 greyhound racing clubs across NSW, 33 receive the majority of their funding from GRNSW. GRNSW indicates that it typically provides between 80% and 90% of each of these 33 clubs’ funding.<sup>466</sup> These costs comprise a significant proportion of GRNSW’s expense budget. The following table shows GRNSW’s forecasted expenditure on prize money, race meeting expenses and club administration expenses:

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<sup>462</sup> Ibid, [557].

<sup>463</sup> Ibid, [553].

<sup>464</sup> Ibid, [558].

<sup>465</sup> PwC Report, p. 44.

<sup>466</sup> Select Committee First Report, p. 23.

**Table 26.1 GRNSW forecasted expenditure on prize money, race meeting expenses and club administration expenses**

Category	FY16	FY17	FY18	FY19	FY20
Prizemoney and club/race meeting expenses	21,434,035	21,648,375	21,864,859	22,083,508	22,304,343
Club administration and funding	9,834,436	9,932,780	10,032,108	10,132,429	10,233,754

Source: GRNSW Supplementary response to Order 24 dated 19 January 2016

26.9 As a percentage of GRNSW’s FY16 Operating Revenue of approximately \$53.156 million, these expenses make up roughly 60% of GRNSW’s expenses for FY16.

26.10 Considering the substantial percentage of GRNSW’s operating revenue that accounts for race track and club expenses, GRNSW has been exploring the possibility of reducing the number of clubs and tracks for a number of years. The Commission heard evidence from former GRNSW Chief Executive, Brent Hogan, that the topic of track rationalisation was raised in January 2013 with the then Minister for Tourism, Major Events, Hospitality and Racing, the Hon. George Souris. Mr Hogan told the Commission that despite the financial difficulties GRNSW was facing at the time, the Minister gave GRNSW’s Board a very clear indication that:

... the industry was not financially sustainable, it needed significant structure reform to achieve that and it was made very clear to my Board in no uncertain terms that rationalisation, regionalisation, call it what you will, would not be occurring and result in the removal of the Board.<sup>467</sup>

26.11 Mr Hogan continued to say that it was his belief, in 2013, that the industry was not in a sustainable financial position and that rationalising the club network was a positive way to ensure the future of the industry. At the time, this plan included the end of non-TAB racing as it “obviously provides no financial input.” Mr Hogan believed that the concern about the loss of any social economic contribution (which he called “overplayed”):

... could be dealt with by ensuring that the 17 tracks, the 14 tracks, whatever the number was that you ultimately determined, was spread in a way that it provided access to the vast majority of licenced persons.<sup>468</sup>

26.12 Additionally, when asked why he believed track rationalisation would have a positive impact, Mr Hogan responded:

Because GRNSW itself basically funded all of the capital requirements of race tracks be they the maintenance, the changing of a roller and a lure to the upgrade of facilities et cetera, et cetera, to the funding of the race club itself from an admin perspective to the funding of the actual racing activity, so by reducing the overall number you are obviously reducing the number of venues that you’re funding. A smaller number of venues which have a higher degree of usage would also of themselves be more economically viable, so if a race track goes from racing once a week, 40 times a year to racing multiple times a week, 52 weeks of a year that race track itself would generate a lot more of its own revenue and become a lot less reliant on a central body for funding. The reality of greyhound racing is that in - in my time was there was essentially three sectors, the metropolitan section, Wentworth Park, 90 per cent of its revenue was money given to it by GRNSW. In the TAB sector whilst it changed between different clubs, it was in that 70 to 80 per cent, in the non-TAB sector it was 50 to 60 largely because they were really volunteer based community style race clubs and, frankly, the central body didn’t have the capacity to provide much more than basic funding to those clubs.<sup>469</sup>

26.13 The issue of rationalisation was examined briefly in 2014 by the NSW Select Committee on Greyhound Racing in NSW (“the Select Committee”), but with a particular focus on the viability

<sup>467</sup> 17 February 2016: T762.9-13.

<sup>468</sup> Ibid, T763.4-7.

<sup>469</sup> Ibid, T763.13-30.

of country racing clubs. The Select Committee noted that “[w]hile it is acknowledged that non-TAB events bring less financial gain to the industry, racing events in country areas are important to the towns and regions they service.”<sup>470</sup> The Select Committee’s First Report includes a number of submissions from various country greyhound racing clubs effectively advocating against the closure or winding down of funding to country clubs, and arguing that the clubs provide significant social contributions to the towns where they are located.<sup>471</sup> Chapter 28 includes the Commission’s findings on the greyhound racing industry’s social contribution in NSW.

## GRNSW’s current position

26.14 The Commission asked PricewaterhouseCoopers (“PwC”) to analyse the financial implications of the Strategic Plan. Based on revised forecasts by GRNSW, the analysis by PwC produced a slightly more favourable outcome for the Strategic Plan than that predicted by the KPMG Report.

<sup>472</sup> The most important assumptions in the revised forecasts relied on by PwC, concern revenues, which depend on whether the TAB di Field Information Use Fees (“RFIU Fees”) will meet expectations. If GRNSW

Another variable that may threaten the success of the Strategic Plan is the uncertain cost of closing tracks. If the Inter-Code Deed (“ICD”) distribution arrangements are amended, however, as the Commission recommends in Chapter 25, it will provide a large margin of safety against the risk that GRNSW will have insufficient funds to execute its Strategic Plan.

26.15 The Commission also asked PwC to consider the impact on GRNSW’s funding for eight, 10, 12 and 14 tracks if the period of rationalisation was reduced from 20 years to three years, five years and 10 years, respectively. PwC estimated that GRNSW would suffer very heavy losses if it attempted to convert eight, 10, 12 or 14 tracks over three or five years. If the conversion period was 10 years, however, GRNSW would remain profitable if the conversion was confined to eight tracks – whether one or two turn tracks. Converting 10 tracks over a 10 year period would also leave GRNSW profitable if the conversion was for a ‘one turn track’, but converting 10 tracks to a ‘two turn track’ over the period would result in cumulative EBIT loss by 2020 of \$<sup>473</sup>.

26.16 GRNSW’s submissions to the Commission in 2015 were based on the KPMG Report and without the benefit of the PwC analysis based on revised forecasts.<sup>474</sup> GRNSW’s submissions expressed the same concerns as the evidence of Mr Hogan. It submitted that

... the current level of funding is insufficient to support the level of change required to raise and maintain operational standards across the existing club network. Further, the limited funding that is available will be prioritised to implementing integrity, animal welfare and education initiatives  
...<sup>475</sup>

26.17 GRNSW said that club rationalisation is a strategy that will take place “[i]rrespective of GRNSW’s ability to secure additional funding...”<sup>476</sup> The additional funds that will be made available to

<sup>470</sup> Select Committee First Report, p. 23.

<sup>471</sup> Ibid, pp. 23-25.

<sup>472</sup> PwC Report, p. 44.

<sup>473</sup> Ibid, p. 47.

<sup>474</sup> It is important to note that at the time of GRNSW’s submission to the Commission, neither the amendments to the Race Fields Information Use Fees regulations or tax harmonisation legislation had been passed. The financial position of GRNSW at the time of the submission is significantly different to its position in April 2016. See Chapter 24 for an analysis of GRNSW’s current financial position.

<sup>475</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [550].

<sup>476</sup> Ibid, [551].

GRNSW by having a smaller club footprint “can then be redistributed to raising clubs to a new operational and infrastructure standard”.<sup>477</sup> GRNSW submitted that minimum standards will be set which clubs will be required to meet in order to qualify for a licence. Once licences have been issued to the compliant clubs, GRNSW foresees its role as maintaining those standards.<sup>478</sup>

26.18 In November 2015, the interim CEO of GRNSW, Paul Newson, set up a Joint Working Group (“JWG”) to investigate a range of reforms for the industry. The JWG consisted of four officers of GRNSW and 10 persons from outside GRNSW. They were:

**Greyhound Racing NSW participants**

- Patrick Hallinan, Executive General manager, Operations (Chairman)
- Wayne Billett, Manager, Industry Reform
- Dr Elizabeth Arnott, Chief Veterinary Officer
- Max Carveth, Strategic Communications Manager

**Stakeholder representatives**

- Mark Duclos, Sky Racing
- Michael Eberand, Industry participant
- Kat Ernst, Industry participant
- Dr Ray Ferguson, Member Australian Veterinary Association – greyhound specialist
- Ryan Freedman, Industry participant
- Douglas Freeman, Tabcorp
- Dale Monteith, Consultant and former racing executive
- Scott Parker, Greyhounds Australasia
- Michael Phillips, Industry participant
- Brenton Scott, Executive Officer GBOTA

26.19 The JWG received 45 written and four oral submissions and received six presentations in respect of a Discussion Paper that it published. It consulted industry participants by means of forums held in different areas of NSW. It received 15 responses to the Draft Report it published. The JWG furnished a lengthy Final Report to the interim CEO in February 2016. The Final Report made 20 recommendations and set out a series of actions to implement the recommendations. The recommendations were well conceived, and the Commission would not hesitate to adopt the great majority of them. Indeed, the only Recommendations that it does not approve are those numbered four, eight, nine and 12. The recommendations and action items were:

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<sup>477</sup> Ibid.

<sup>478</sup> Ibid, [552].

Figure 26.2 Joint Working Group recommendations: implementation and timeline

Figure 1: Implementation actions and timeline

Recommendation		2016		
		Q1	Q2	Q3
Reduce 'wastage' by placing animal welfare at the centre	Recommendation 1: Expand greyhound registration and monitoring to cover the entire lifecycle	A. Develop new regulatory, monitoring & reporting framework encompassing greyhounds, participants, clubs, & GRNSW		
	Recommendation 2: Expand licensing of greyhound handlers to cover the entire lifecycle	B. Develop standards framework for all greyhound handlers		
	Recommendation 3: Supporting the development and introduction of minimum standards	C. Consultation with experts	D. Undertake education campaign	
	Recommendation 4: Introduce a state-wide breeding quota	E. Obtain legal advice	F. Study of quota value, phase-in period, & allocation approach	
	Recommendation 5: Expand greyhound re-homing in NSW		G. National advocacy	H. Study of greyhound re-homing and financing
Centres of Excellence	Recommendation 6: Undertake further specification and analysis of the Centre of Excellence concept	I. Committee of club GMs, to specify CoE features and facilities	J. Financial analysis of CoEs	
	Recommendation 7: Prepare a Metropolitan Racing Strategy		K. Prepare strategy	
Regulatory and governance reform	Recommendation 8: Introduce new organisational structure	L. Draft amendments to Act		
	Recommendation 9: Implement a new GRNSW board structure	M. Develop skills matrix to be used for board appointments		
	Recommendation 10: Enhancements to transparency and accountability of GRNSW	Implemented by Action A		
	Recommendation 11: Appoint a greyhound racing Integrity Commissioner	Implemented by Action L		
	Recommendation 12: Establish a new Advisory Committee to replace the GRICG	Implemented by Action L		
	Recommendation 13: Reform minimum club board membership requirements	N. Revise Clubs Registration Policy		
	Recommendation 14: Enhance club governance and reporting model	Implemented by Action A and L		
Using grading & programming to improve welfare	Recommendation 15: Amend the aims of the grading policy	O. Finalise Grading Policy Review		
	Recommendation 16: Targeted changes to Grading Policy	O. Finalise Grading Policy Review		
	Recommendation 17: Use programming to enhance animal welfare	P. Establish committee to identify revised programming objectives and policy, & consider preferential box drawers & 5 starter races		
Wagging and Financial Reward Landscape	Recommendation 18: Targeted changes to prize money allocation		Q. Analysis of revised prizemoney allocations and place distribution (informed by Action T)	R. Revise Club Funding Policy
	Recommendation 19: Undertake analysis to identify how best to improve race quality		S. Committee to identify options for reducing track-related interference, optimum number & mix of races	
	Recommendation 20: Develop a financial model to examine strategic issues	T. Strategic financial modelling of future GRNSW revenues and expenditure		

Source: Joint Working Group Report

- 26.20 The JWG also did not have the benefit of the PwC analysis. It said that it sensed that current industry revenues were inadequate to finance all aspects of needed reform.<sup>479</sup> The JWG also concluded that “significant change is required to the current network of 34 tracks if the industry is to be financially sustainable into the future, while also placing a strong emphasis on animal welfare and governance.”<sup>480</sup> The JWG expressed the view that GRNSW should develop or commission a financial model that would allow identification of the optimal structure for obtaining maximum financial returns.<sup>481</sup> However, in the absence of such a model, the JWG stated that it was not feasible to determine whether GRNSW presently has the resources to implement its recommendations, community expectations of improvement in animal welfare and industry expectations of improved prize money. The JWG thought it likely that GRNSW would need to look at other options to raise funds including seeking the amendment of the ICD.<sup>482</sup>
- 26.21 The Commission has already mentioned that the KPMG Report did not deal with animal welfare and integrity costs. Another omission in the material submitted by GRNSW was any attempt to assess the additional costs for the industry if the Commission recommended that the regulatory function should be taken from it and given to another body. Given that GRNSW contended that it should retain its regulatory as well as its commercial functions, this omission may be understandable, but it left the Commission without any input from GRNSW on an important matter. However, the deficiencies in submissions of GRNSW went far beyond these two omissions.
- 26.22 At this stage, the Strategic Plan is merely aspirational. GRNSW has not yet determined the optimal number of clubs necessary to achieve its goals. In its report, KPMG stated that, in determining the demand for these clubs, “[a]n Objective assessment was completed based on Subjective criteria applied by GRNSW management to determine the required location of the clubs based on demographics and regional requirements.”<sup>483</sup> In other words, the suggested figure of 10 to 14 clubs was not wholly evidence based. It was determined on criteria whose major premise was at best the intuitive judgment of management. Subsequently, in answering an Order issued by the Commission, GRNSW suggested that the figure may be eight to 14 clubs. In due course, its confident assertion that the NSW industry can be reformed with 10 to 14 (or eight to 14) clubs may turn out to be wide of the mark. What it can achieve will depend on the funding it receives via TAB and corporate bookmaking wagering and the time period it ultimately selects to achieve the rationalisation of the club network.
- 26.23 A report delivered to GRNSW by consulting firm Urbis on 12 May 2016 (“the Urbis Report”) assessed the number and location of greyhound racing clubs required to provide access to the majority of trainers in NSW. The Urbis Report proceeded on the basis that:
- [i]t is understood that trainers will typically race their dogs within 2 hours driving distance of home. Consequently, a principle that is applied to the appropriate location of clubs is that 80% of trainers must be within 2 hours of a greyhound racing club.<sup>484</sup>
- 26.24 Proceeding on this basis, Urbis determined that with the current footprint of 34 clubs across NSW, 99.3% of trainers are within a two hour drive of a racing club. Urbis then concluded that with the optimal spread of clubs, 80% of greyhound trainers in NSW could be within two hours’ drive of a club with only four clubs existing in NSW; however six or seven clubs would ensure this

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<sup>479</sup> JWG Report, p. 87.

<sup>480</sup> *Ibid.*, p. 44.

<sup>481</sup> *Ibid.*, p. 86.

<sup>482</sup> *Ibid.*, p. 87.

<sup>483</sup> KPMG Report, p. 16.

<sup>484</sup> Urbis Report, p. 1.

was certainly the case.<sup>485</sup> Urbis did not indicate which four clubs it was referring to in the Urbis Report.

- 26.25 Urbis acknowledged that while four clubs could potentially cover 80% of trainers within NSW, “location will not be the only criterion that determines the final strategy. Other political, performance, growth and strategic issues will come into play.”<sup>486</sup> The Urbis Report did not consider any other considerations (such as financial viability) in determining the number of clubs required to service greyhound trainers in NSW.
- 26.26 As an example, the Urbis Report provided a map showing that seven clubs could cover 92% of greyhound trainers. Those club locations would be Broken Hill, Coonabarabran, Cowra, Goulburn, Lismore, The Gardens and Wagga Wagga.<sup>487</sup> Importantly, Sydney club is necessary to cover this many trainers, however, it would be unlikely for GRNSW to completely remove all greyhound racing from the greater Sydney area.
- 26.27 The Strategic Plan envisages that all present club licences will be withdrawn and each club will be required to apply for a new license as a Centre of Excellence.<sup>488</sup>
- 26.28 GRNSW has determined that licences will be granted according to the following criteria:
- Financial Position: e.g. club profit and loss, equity position
  - Contractual Obligations: e.g. commitments to Sky/TAB
  - GRNSW: e.g. ability to meet higher operational standards and timeframes
  - Tracks & Infrastructure: e.g. track condition, supporting facilities, costs required to elevate to required standard
  - Programming Requirements: e.g. optimum number and frequency of races, capacity to hold races
  - Geographic Distribution: e.g. ease of access, travel time and future growth areas
  - Participants & Social Impact: e.g. number of local trainers/owners/dogs and direct/indirect social contribution
  - Club Management: e.g. business acumen of management, engagement of community, conflicts of interest.<sup>489</sup>
- 26.29 What weighting is to be given to each of these criteria in determining whether to grant a licence does not appear. Nor did the Submission of GRNSW indicate any hierarchical priority for these criteria.
- 26.30 The cost of Track Infrastructure – one of the criteria for a licence - will be one of the largest items of expenditure in setting up COEs. The JWG Report stated that, based on safety, track type and length, surface type and quality and kennelling, there are large variations between tracks in New South Wales. The design of tracks and the material used for the racing surface can have a direct impact on the number and type of injuries.<sup>490</sup>
- 26.31 The KPMG Report stated that “GRNSW management were unable to clarify the costs involved to address track infrastructure without agreement on minimum standards for tracks going

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<sup>485</sup> Urbis Report, p. 5.

<sup>486</sup> Ibid, p. 5.

<sup>487</sup> Ibid, p. 6.

<sup>488</sup> KPMG Report, p.16.

<sup>489</sup> Ibid, p.16.

<sup>490</sup> JWG Report, p. 49.

forward.”<sup>491</sup> KPMG stated that “[m]any of the costs are dependent on the location, the clubs involved and the expected standards.”<sup>492</sup>

26.32 Only 14 clubs in New South Wales have freehold title to their tracks. The other 20 tracks are held on land that is leased or the subject of a trust.<sup>493</sup> The JWG said that between 10 and 14 acres of land would be required for a COE track.<sup>494</sup> It estimated that to establish a one-turn COE would cost \$8.513 million and to develop a two- turn COE would cost \$10.713 million.<sup>495</sup> These costs do not include the cost of land acquisition or car parking facilities.

26.33 Some infrastructure costs may be larger than those estimated by the JWG. A study by Deloitte in 2015 indicated that a new metropolitan track based on relocation costs of Wentworth Park would cost \$33.6 million and, if a new non-metropolitan track were constructed, it would cost \$26.7 million in addition to the cost of relocation, leasing and remediation.<sup>496</sup> An upgrade of a non-TAB track would cost \$14.2 million.<sup>497</sup>

#### ***How many clubs will remain?***

26.34 One thing is certain: GRNSW’s present planning envisages closing down all non-TAB racing in NSW. While in its Submission to the Commission it does not specifically state that it plans on closing down non-TAB racing, the JWG Report proposed:

Finally, the JWG considered that Centre of Excellence tracks should only host TAB racing. This would bring NSW into line with Victoria, where there is no non-TAB racing.<sup>498</sup>

26.35 There are currently 19 non-TAB tracks in NSW:

- Appin
- Armidale
- Broken Hill
- Coonabarabran
- Coonamble
- Cowra
- Gunnedah
- Kempsey
- Lithgow
- Moree
- Mudgee
- Muswellbrook
- Social Club (Potts Park)
- Tamworth
- Taree
- Temora
- Tweed Heads
- Wauchope
- Young

26.36 As the Commission has noted, in its response to Order 24, GRNSW has submitted to the Commission that it foresees a range of between eight and 14 clubs remaining across NSW to

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<sup>491</sup> KPMG Report, p.20.

<sup>492</sup> Ibid.

<sup>493</sup> JWG Report, p. 44.

<sup>494</sup> Ibid, p. 53.

<sup>495</sup> Ibid, p. 53.

<sup>496</sup> KPMG Report, p.20.

<sup>497</sup> Ibid, p.20.

<sup>498</sup> JWG Report, p. 49.

host greyhound racing, being exclusively TAB racing.<sup>499</sup> This would mean that between 20 and 26 clubs would be closed down or at least cease to be funded by GRNSW. Non-TAB tracks, which produce no revenue from pari-mutuel betting, will almost certainly be among them.

26.37 GRNSW arrived at the range of eight to 14 clubs after considering the “NSW regional, demographic and race meet requirements in NSW.” GRNSW submitted to the Commission:

The low range of 10 clubs is based on the requirement to meet current racing expectations and the demand for range of racing and availability of local greyhounds. The high range of 14 clubs is based on the density of participants, travel time and nomination flows ...<sup>500</sup>

#### **Which clubs will remain?**

26.38 GRNSW has not confirmed which clubs will remain (except Gosford), which clubs will cease to be funded, or if new clubs will be established. In its Submission to the Commission, GRNSW indicated that the club allocation may be made as follows:

... the following number of clubs would be allocated to the following regions:

- (a) Central West: 2 clubs;
- (b) Hunter: 3 clubs (including Gosford);
- (c) Illawarra/South Coast: 2 clubs;
- (d) Metro/Sydney: 2 clubs;
- (e) Mid North Coast: 1 club;
- (f) New England: 1 club;
- (g) Northern Rivers: 2 clubs; and
- (h) Riverina: 1 club.<sup>501</sup>

26.39 GRNSW stated that this allocation of clubs was arrived at “according to participant and demographic requirements.”<sup>502</sup>

26.40 The more recent JWG Report has recommended that the remaining clubs be located in the following regions:

- Greater Sydney;
- Hunter/Central Coast;
- Illawarra/South Coast and Tablelands;
- Far North Coast; and
- Central West.<sup>503</sup>

26.41 Under this plan, the Mid North Coast, New England, Northern Rivers and Riverina regions would all be without a greyhound racing club.

26.42 The reasons the JWG gave for locating the remaining clubs in the five recommended regions are:

- to ensure 80% of participants have access to racing within two hours driving distance;

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<sup>499</sup> GRNSW’s submission to the Commission indicated a figure of 10-14 tracks: GRNSW, Submission 769 to the Commission dated 24 August 2015, [556]. GRNSW’s response to Order 24 indicated a figure of 8-14 tracks: GRNSW (Supplementary) Response to Order 24 dated 19 January 2016, p. 11. The JWG Report does not give an estimate of the number of tracks to remain.

<sup>500</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [553].

<sup>501</sup> Ibid, [553].

<sup>502</sup> Ibid, [558].

<sup>503</sup> JWG Report, p. 51.

- to maximise the current club/track network to determine where racing can be continued now, and where racing could take place with appropriate investment; and
- to limit funds required for land acquisition, it being preferable that Centres of Excellence be limited to industry owned or controlled land, as opposed to privately owned or Trust owned land.<sup>504</sup>

26.43 The JWG determined that the regions flagged to host racing clubs contained 81% of the trainers in NSW and 77% of the racing greyhounds. The JWG, however, conceded that further “geospatial analysis” and financial sustainability analysis needed to be done before determining the exact locations for the race clubs.<sup>505</sup>

26.44 The geospatial analysis the JWG referred to was provided to GRNSW in the Urbis Report on 12 May 2016. The Report indicates that 80% of greyhound trainers in NSW could be covered by as few as four clubs, however six to seven clubs is a more realistic number.<sup>506</sup>

## Centres of Excellence

26.45 Part of GRNSW’s plan to rationalise the club network in NSW involves lifting standards of integrity, welfare, operations and facilities, and standardising these improvements across the State.

26.46 Currently, GRNSW perceives that “[m]any of the clubs around NSW are outdated and require significant infrastructure upgrades including improved track design.”<sup>507</sup> By reducing the number of clubs, GRNSW plans to “create additional funds that then be redistributed to raising [remaining] clubs to a new operational and infrastructure standard ...”<sup>508</sup> However, as indicated in Chapter 25, the revised forecasts, prepared by GRNSW, indicate that, with Tax Harmonisation receipts and raised RFIU Fees, GRNSW will probably now receive sufficient funds to maintain the current network although the Commission infers that the tracks would not be up to the standard of the proposed Centres of Excellence (“COEs”).

26.47 The JWG discussed the COE model extensively and made a number of recommendations to GRNSW. Among the chief matters referred to by the JWG was the standardisation of features such as “safety standards, track type and length, surface type and quality, kennel infrastructure, lures and available public amenities.”<sup>509</sup>

26.48 Under the proposal by the JWG, COEs would have the following characteristics for greyhound racing:

- best-practice track design, camber and set out which minimises the risk of greyhound injury. It may be appropriate that tracks be selected to ensure a range of track layouts (i.e. one turn, two turn, straight track).
- application of best-practice maintenance standards, which may require the appointment of a full-time track curator with appropriate qualifications.
- best-practice kennel facilities, with specific standards to be identified. These facilities are to be both for race days, and also available for participants unable to kennel their greyhounds at their residence.

<sup>504</sup> JWG Report, p. 51.

<sup>505</sup> Ibid, p. 52.

<sup>506</sup> Urbis Report, p. 6.

<sup>507</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [550].

<sup>508</sup> Ibid, [551].

<sup>509</sup> JWG Report, p. 49.

- facilities for trialling, with time set aside outside racing for this purpose.<sup>510</sup>

26.49 In addition, the JWG proposed that COEs should feature a wide range of non-racing facilities, including:

- facilities to support the delivery of education programs to trainers, owners and other participant [sic];
- greyhound education facilities, including socialisation areas and training (e.g. Habituation lessons to teach kennelling), bull pen, hydrotherapy pool, breaking in opportunities, a slipping track, sprint lanes and drag lure coursing facilities;
- on-site veterinary clinic, which is open during business hours, with emergency options. This will include a veterinarian being present during racing, trialling, and for private consultations. The veterinarian would also play a role in the delivery of education programs, and support the Greyhounds As Pets program. The clinic may also be co-located with a greyhound (and pet) supplies facility;
- hospitality facilities, which can be used on race days, as well as for community events and functions. These facilities will provide an opportunity for raising community awareness of greyhound racing;
- change rooms and showers for trainers and other guests, and potentially overnight accommodation (if there is not commercial accommodation nearby);
- participant portal access, where participants can pay fees, submit documentation, undertake online nominations, and other activities; and
- facilities for Greyhounds As Pets, providing access to staff trained in behavioural assessment and providing surrender points for trainers. This facility may provide fostering or rehoming out of the facility (depending on the regional adoption demand) or transport to major facility near Sydney to manage adoption. The facility may also provide a base for community engagement focussed on increasing awareness of greyhound adoption as an option in the community.<sup>511</sup>

26.50 The JWG also considered how the future track network would be linked to the COEs. The three options they considered were:

- COE tracks only, comprising a single facility;
- a “Racing Hub with trialling spokes”, where the COE hosts all racing, but a number of trial track “spokes” are located “in the local area” of the COE; and
- a “COE Hub with racing spokes”, where the COE is the focus for racing, however there are additional tracks where racing would take place at “spoke” venues with minimal infrastructure, but high standard track design.<sup>512</sup>

26.51 The JWG recommended that GRNSW should adopt the third approach, the COE Hub with racing spokes. While this approach may provide racing with the most participants, it is also clearly the most expensive, ‘gold-plated’ option of the three proposals. If this model is adopted, the strategy of reducing club numbers to reduce costs is compromised if each of the eight to 14

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<sup>510</sup> JWG Report, p. 49.

<sup>511</sup> Ibid, pp. 49-50.

<sup>512</sup> Ibid, pp. 50-51.

COEs has a number of 'spoke' tracks. The ultimate number of tracks may end up being exactly the same as that which GRNSW currently funds, resulting in little financial savings on an operational level. This is without even considering the funding needed to bring that number of tracks up to a minimum standard of design and safety.

- 26.52 The option proposed by the JWG would require a complete upgrade of all COE facilities and tracks, as well as an upgrade to all 'spoke' tracks. For such a project, the JWG has estimated that the strategy should take place *over a period of twenty years*.<sup>513</sup> The Commission is strongly of the view that, given GRNSW's financial position and the uncertainties attached to its future income stream, GRNSW should adopt the first option.

## Funding for Track Rationalisation and Centres of Excellence

### GRNSW's funding plans for Track Rationalisation

- 26.53 Central to the plan of reducing the number of greyhound racing clubs is the intention to redistribute the funds saved to fund better operations and facilities and to maintain better standards at the remaining tracks. The rationalisation plan is, therefore, more accurately characterised as a redistribution of funds. However, depending on the number of clubs GRNSW intends to retain, a funding gap may exist even on GRNSW's revised estimates. After examining the financial implications of the Strategic Plan, PwC concluded that GRNSW would not remain profitable if it created more than 12 COEs.<sup>514</sup>
- 26.54 In 2015, as noted in Chapter 25, GRNSW commissioned a report by KPMG to determine, among other matters, how many clubs it could afford to fund to an upgraded operational standard. The KPMG Report was submitted as an annexure to GRNSW's submission to the Commission.
- 26.55 In its Report, KPMG determined that GRNSW could afford to fund between 6 and 11 clubs to the upgraded operational standard and remain financially viable. This was based on funding to the remaining clubs being increased to \$ [REDACTED] per annum per club. This figure includes \$ [REDACTED] of operational expenditure and \$ [REDACTED] per annum of capital expenditure.<sup>515</sup>
- 26.56 GRNSW also noted that an additional \$ [REDACTED] of funding would be required as a one-off for setup costs to raise existing operational standards. This amount would not cover improved infrastructure or developments.<sup>516</sup> Nor would it cover increases in animal welfare expenditure.

### Funding Centres of Excellence

- 26.57 Mr Newson initially indicated to the Commission, in response to an Order, that each COE would require approximately \$ [REDACTED] in funding to bring it up to the desired standard.<sup>517</sup>
- 26.58 The JWG Report delivered a more precise figure after collating information from other States on track redevelopments. As noted earlier, it estimated that to establish a one-turn COE would cost \$8.513 million and to develop a two-turn track COE would cost \$10.713 million.<sup>518</sup> These costs do not include the cost of land acquisition or car parking facilities.
- 26.59 In June 2016, GRNSW submitted that the Commission was failing to take into account the alternate possibility of straight tracks being used instead of one or two-turn tacks. This

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<sup>513</sup> JWG Report, p. 52.

<sup>514</sup> PwC Report, p. 46.

<sup>515</sup> KPMG Report, p. 19.

<sup>516</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [556].

<sup>517</sup> GRNSW (Supplementary) Response to Order 24 dated 19 January 2016, p. 11.

<sup>518</sup> JWG Report, p. 53.

submission is unhelpful. Of the 34 tracks currently operating in NSW, there is only one straight track. The Commission has seen no evidence and, until 6 June 2016, had received no submission to the effect that GRNSW intends to convert any of the remaining 33 tracks to straight tracks. How GRNSW proposes to redevelop the current tracks to fit such tracks, or to obtain sufficient land to enable these to be developed has not been articulated.

26.60 If GRNSW develops 10 to 14 COEs, the potential cost could add up to more than \$150 million of additional funding to build the COEs *over the next 20 years*. Although GRNSW put no evidence before the Commission that enables the Commission to be satisfied that this potential cost is achievable, the PwC Report indicates that it may be achievable.

26.61 In its 6 June 2016 submission, GRNSW submitted that the PwC Report should not be relied upon in respect of forecasting financial viability based on expenditure for COEs. It argued out that meaningful impacts on financial viability cannot be determined until the amount of clubs and which clubs and tracks will remain, which track designs are to be deployed, and the timeframe for the completion of works has been determined. On its face, this submission is valid. However, the PwC's calculations, and the conclusions arrived at by the Commission, are based on proposals and recommendations sought, and reports obtained, by GRNSW and information presented to the Commission by GRNSW. GRNSW cannot now distance itself from the information it has obtained to inform itself, and the Commission, of the potential impact to its financial position. The Commission has presented a range of scenarios that all fall within the range of future club and track rationalisation and the funding GRNSW has advised will be required to complete the works. The Commission considers that, had it not undertaken to analyse the potential financial impacts of COEs on GRNSW's financial viability, it would not be adequately fulfilling its inquiries as required by the Commission's Terms of Reference.

## Additional expense considerations

### *Overview of additional expenses considered*

26.62 The Commission asked PwC to overlay the financial forecasts with new assumptions in relation to additional animal welfare expenditure; and the rationalisation of the number of clubs from 34 to between eight and 14. In its Report to the Commission, PwC said:

The following are the additional expenses considered:

#### 6.1.1. Upgrade to Wyee GAP facility

On 20 March 2016, GRNSW announced a plan for a major expansion of the Greyhounds As Pets rehoming facility including the creation of 76 additional kennels, a veterinary clinic and a specialised adoption centre. The improvements announced by GRNSW are expected to be undertaken between FY16 and FY17 and are expected to cost at least \$1m.

We note that GRNSW have not factored the above mentioned costs in their forecasts and accordingly, these costs have been considered.

#### 6.1.2. Track rationalisation

In 2015, KPMG prepared a report for GRNSW which recommended the optimisation of the number of clubs in order for the greyhound racing industry to be financially sustainable due to the increased costs associated with meeting the revised standards of compliance. Currently, there are 34 greyhound racing clubs operating in NSW and GRNSW have confirmed that they plan to reduce the number of clubs to between 8 and 14 mainly through the closure of the non-TAB racing clubs.

In addition, KPMG estimated that the funding cost per club to cover operating expenses amounts to \$0.83m including the proposed upgrading to the revised compliance standards and excluding prize money. We note that per GRNSW's current FY16 budget, \$9.8m is allocated annually for 'Club Administration and Funding', which considers operating expenditure for approximately 12 clubs (c. \$0.83m per club).

The final number of clubs is yet to be agreed; therefore we have been instructed to evaluate a number of scenarios depending on the number of clubs (8 to 14) and based on a funding cost of

\$0.83m per club. We have considered that any costs saved from closing clubs will be part of the additional investment into the remaining clubs and that the reduction in the number of clubs will have no impact on the annual budget for 'racing club and infrastructure' currently projected at \$1.55m per year.

In addition, initial one off costs amounting to \$1.7m are expected to be incurred to set up the track rationalisation scheme spread over FY17 - FY19 in relation to infrastructure improvements, the closure of Breeding Incentive Scheme, the launch of the Online Services Portal and the digitalisation of Kennel Inspections.

#### 6.1.3. Establishment of Centres of Excellence

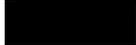
As part of the animal welfare measures adopted by GRNSW, 8 to 14 clubs are expected to be converted into Centres of Excellence ("COE"). We note that per GRNSW, the cost to convert a track into a COE is estimated to be \$8.513 million for a 'one turn track' or \$10.513 million for a 'two turn track', over a period of 20 years.

#### 6.2. Impact of additional expense considerations

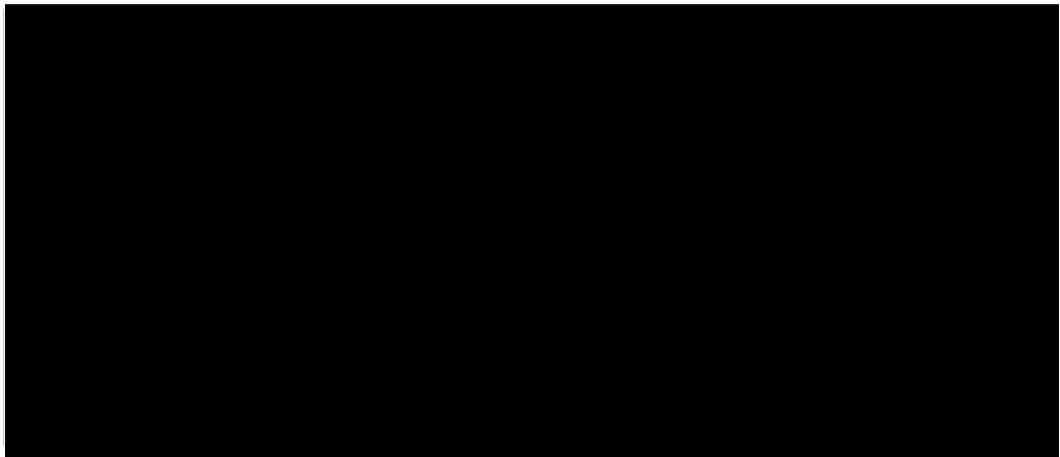
The impact of the additional expenses has been prepared considering the following:

- GRNSW will be eligible for the benefits accruing from tax harmonisation...

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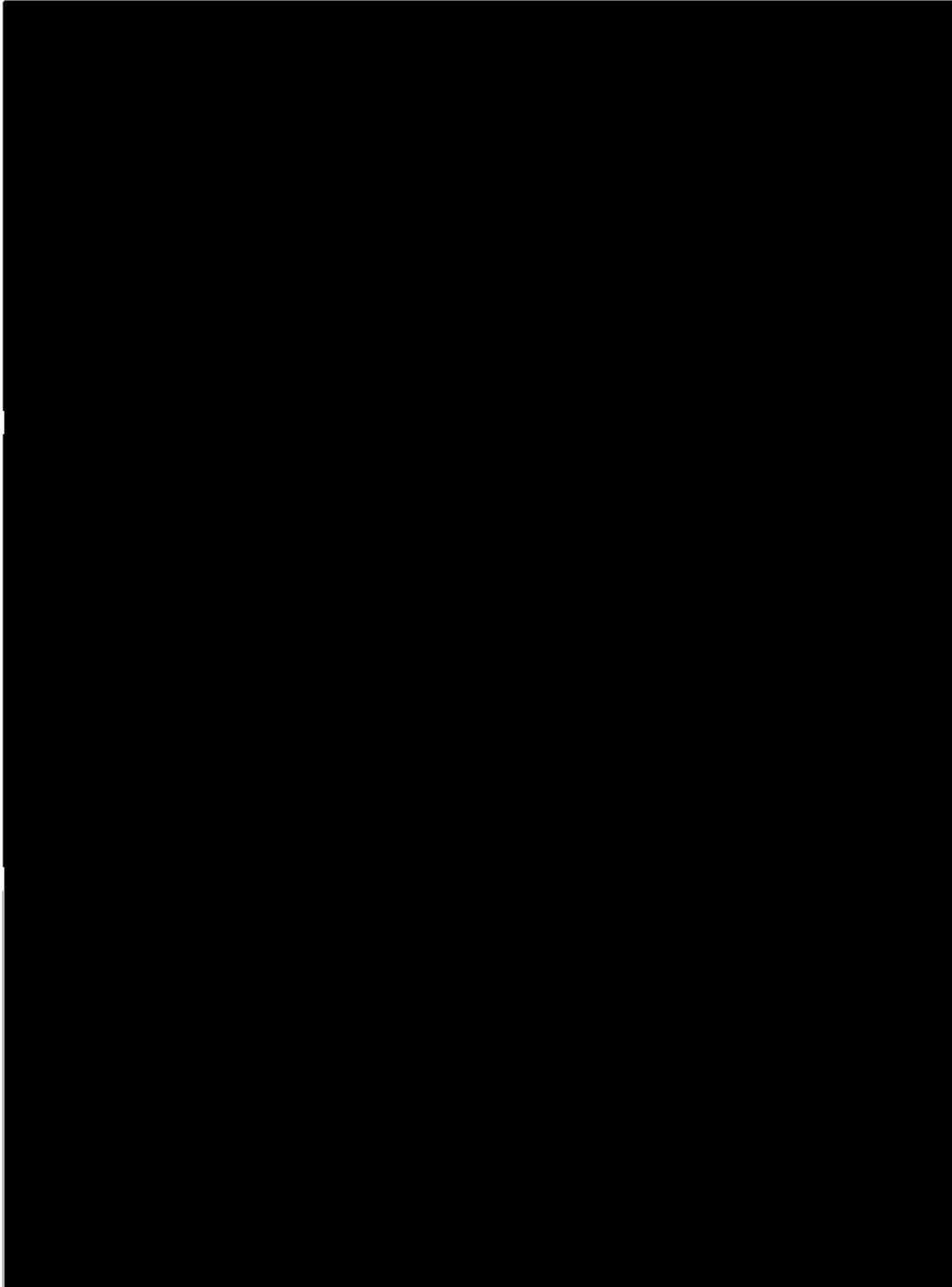
 <sup>519</sup>

26.63 Considering the above and the additional expense considerations outlined in Section 6.1, the following tables show EBIT levels for GRNSW in the event the racing clubs are reduced to eight, 10, 12 and 14 respectively.



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<sup>519</sup> PwC Report, pp. 44-45.



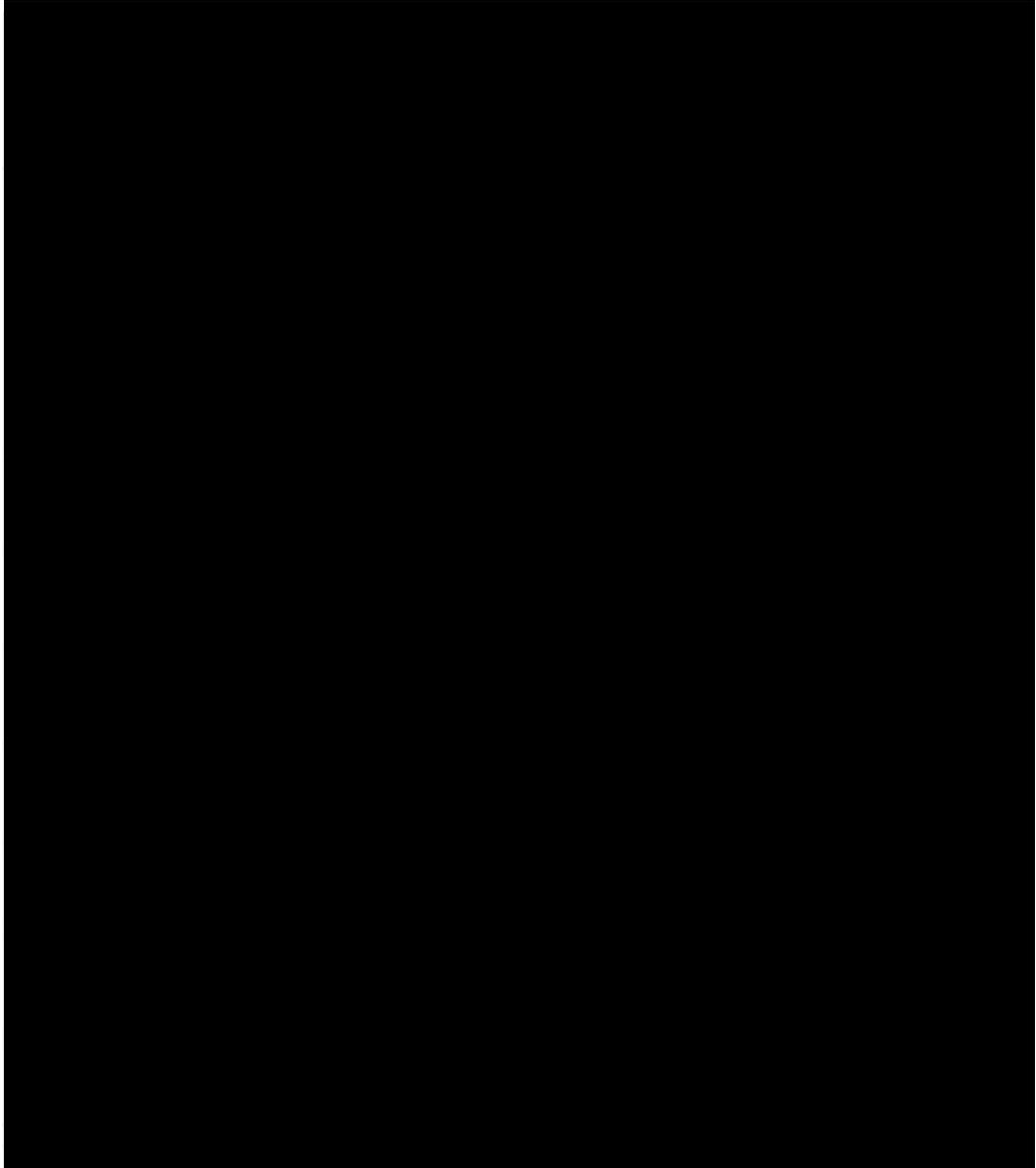
***Conclusion on additional expense considerations***

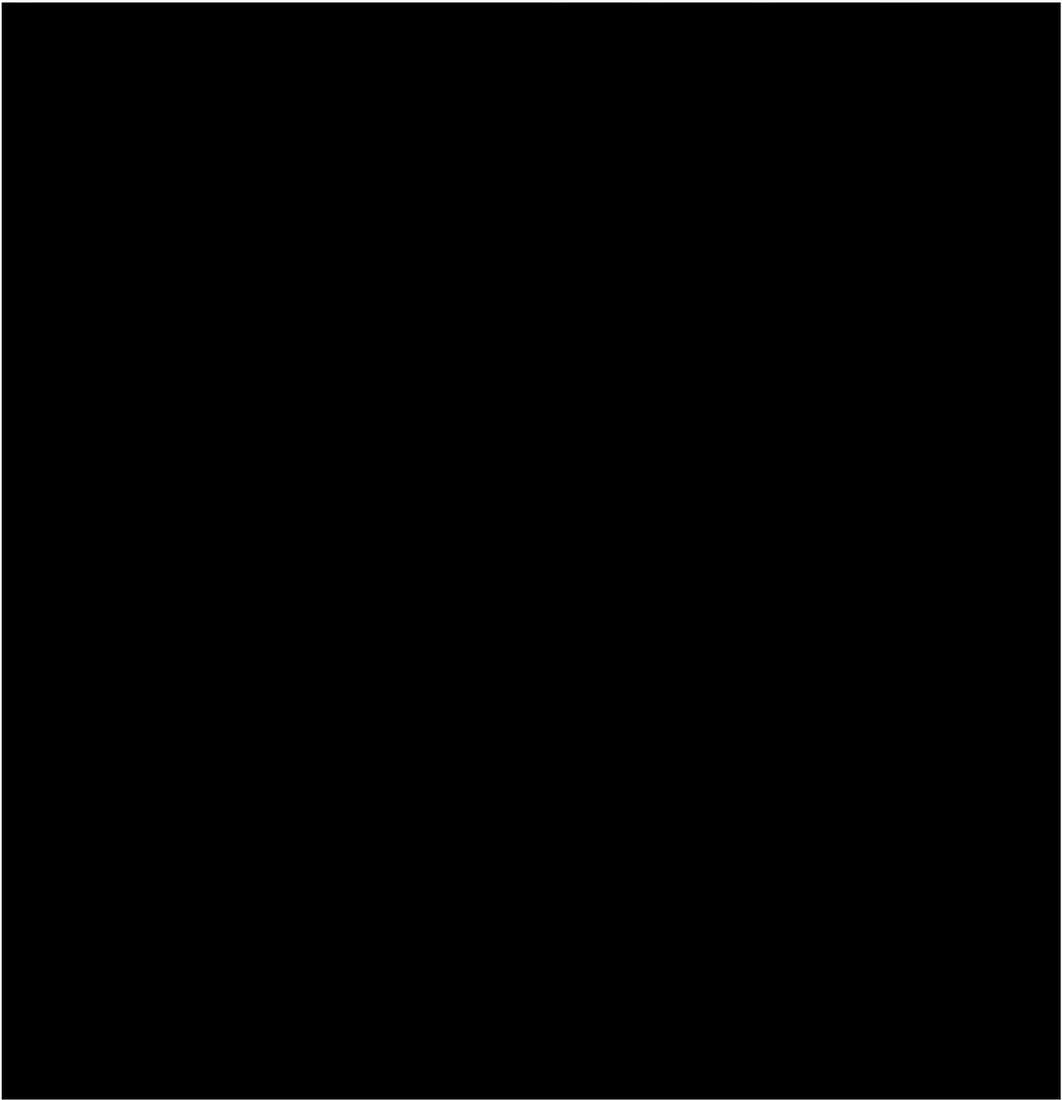
- 26.64 The calculations indicate that the profitability of GRNSW is significantly affected for the scenario where 14 clubs are improved, even after considering the benefits of tax harmonisation.
- 26.65 GRNSW is still forecast to be profitable if track improvements for a maximum of 12 clubs are undertaken.
- 26.66 The above tables show the predicted operational figures for GRNSW to FY20 on the assumption that the COEs will be introduced over a 20 year period, The Commission also asked PwC to

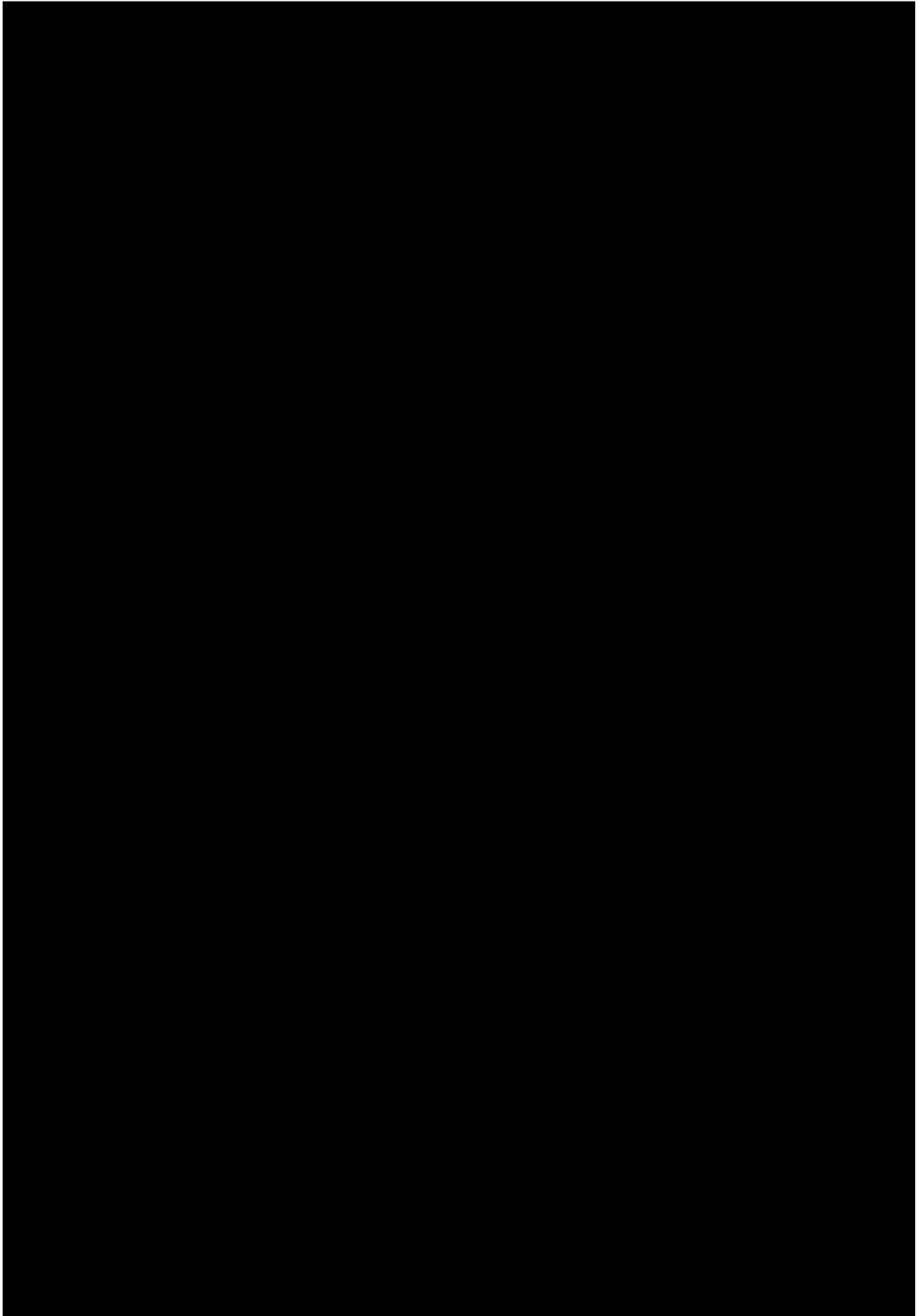
evaluate the financial operations of GRNSW to FY20 if the COEs were introduced over three, five and 10 years, respectively.

### **Scenario analysis**

26.67 To carry out this request of the Commission, PwC calculated the following illustrative sensitivities to understand the impact on EBIT if the track improvements were undertaken over three, five, and 10 year periods. They were shown in Appendix 7 of the PwC Report.



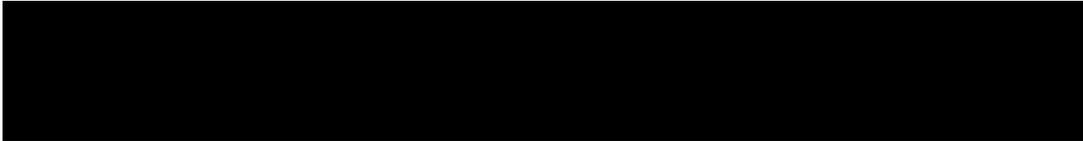






***Conclusion on scenarios analysis***

26.68 The calculations indicate that the profitability of GRNSW would be significantly affected if the time for converting clubs into COEs is reduced.

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26.70 

## **Participant education**

### **Joint Working Group Report**

26.71 Another potential expense for GRNSW is the education of participants in the industry so as to improve animal welfare. The JWG Report referred to participant education alongside licensing requirements for breeders and trainers as a way to improve welfare outcomes for greyhounds.<sup>520</sup>

26.72 In Chapter 3 of the JWG Report headed 'Reduce wastage by placing animal welfare at the centre', the JWG noted that NSW reforms will need to reflect Greyhounds Australasia's ("GA") *National Greyhound Welfare Strategy* ("NGWS"), which included a national approach to participant education.

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<sup>520</sup> JWG Report, p. 26.

26.73 The JWG recommended that

... In particular, participants involved with greyhounds at each stage of the lifecycle should possess appropriate educational qualifications. This may require the establishment of new courses, and the identification of approved training providers. The JWG supports a consistent approach being adopted throughout the lifecycle and the preferred model is for all participants to be required to have a licence.<sup>521</sup>

26.74 Recommendation 2 of the JWG Report included “the introduction of minimum standards, together with the completion of an educational qualification (with exemptions available for recognition of prior learning)”. Recommendation 3 included “the development of appropriate educational materials and training programs, providing participants with the requisite knowledge and skills to meet the new standards.”<sup>522</sup>

26.75 The JWG provided a table comparing current regulation and program requirements for owners and participants with those proposed by the JWG.<sup>523</sup> It proposed:

- a requirement for breeders to complete a qualification skill set in order to hold a license;<sup>524</sup>
- a requirement for rearers and educators to “complete educational competency”;<sup>525</sup> and
- the introduction of education sessions to trainers (sessions to cover animal welfare, chasing and husbandry techniques).<sup>526</sup>

26.76 In Chapter 4 headed ‘Centres of Excellence’, the JWG refers to the need for COEs to include facilities to support the delivery of education programs to participants.<sup>527</sup>

## GRNSW’s Submissions

26.77 In April 2015, GRNSW engaged the Working Dog Alliance (“WDA”) to conduct a review of best practice training methodologies. The WDA found that “several improvements were needed in the areas of participant education as well as rearing and training methods adopted by the industry”.<sup>528</sup>

26.78 GRNSW’s submission also noted that, following some criticisms (e.g. from the RSCPA) of GA’s NGWS, GRNSW and GRV developed a paper expanding on a number of GRNSW objectives, including education. Specifically, the paper mapped a timeline and resource requirements for “adopting a national approach to education including developing formal education modules for delivery to all new participants to be assessed on core competencies before obtaining the relevant licence.”<sup>529</sup>

26.79 Under Part D head ‘Restructure of the Education and Welfare Unit’ of its Submissions, GRNSW stated a Chief Veterinary Officer had been appointed to oversee the new Welfare Unit. One of the objectives of the Chief Veterinary Officer’s role is to “lead the development and implementation of greyhound racing industry participant accreditation, education and development initiatives”.<sup>530</sup>

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<sup>521</sup> JWG Report, p. 32.

<sup>522</sup> Ibid, p. 34.

<sup>523</sup> Ibid, pp. 35-37.

<sup>524</sup> Ibid, p. 35.

<sup>525</sup> Ibid, p. 36.

<sup>526</sup> Ibid, p. 36.

<sup>527</sup> Ibid, p. 49.

<sup>528</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [465].

<sup>529</sup> Ibid, [471(d)].

<sup>530</sup> Ibid, [482(h)].

26.80 The Submission goes on:

- GRNSW believes that initial and ongoing education of industry participants plays a vital part in improving animal welfare standards. Specifically, the Best Practice Review found that an important part of the cultural change required to reduce, if not entirely eliminate the physical abuses associated with greyhound racing is a strong educational process.
- GRNSW has identified the need for a dedicated Education & Industry Development Section to provide awareness, guidance and education to industry participants on reform. In August 2015, GRNSW engaged a new Manager Education & Industry Development as a part of additional resources to be applied to support the successful development and delivery of the education units under the RGR08 Racing Training Package.
- As noted in Chapter 2, GRNSW has been working with key education organisations such as AgriFood and DEC to develop and review the RGR08 Racing Training Package. GRNSW is committed to work closely with peak bodies and welfare groups to continually improve its knowledge and ensure welfare decisions are based on a strong scientific platform and that participants are provided with abundant information so they can make better choices at all stages of a greyhound’s lifecycle.
- Currently, efforts to educate industry have been carried out in an ad-hoc manner by GRNSW and there has been no cohesive or strategic approach to industry guidance, education and research. Under the new Welfare Unit, the new Education & Industry Development Section will comprise the Manager Education & Industry Development (who will report to the Chief Veterinary Officer) and will be supported by two Industry Engagement and Training Officers.
- Together, these areas will be responsible for:
  - (a) the development and promotion of animal welfare and integrity policies;
  - (b) development of national educational standards to support licences;
  - (c) delivery of a range of internal and external training programs for industry participants and GRNSW staff; and
  - (d) regular engagement with industry representatives including GA, RTOs, the RSPCA NSW, AgriFood and DEC.
- GRNSW anticipates that this Education & Industry Development Section will greatly assist in repositioning the industry and creating significant cultural change both internally and externally.<sup>531</sup>

26.81 This section of the Submission does not provide any further information about specific programs or a timeline for their implementation.

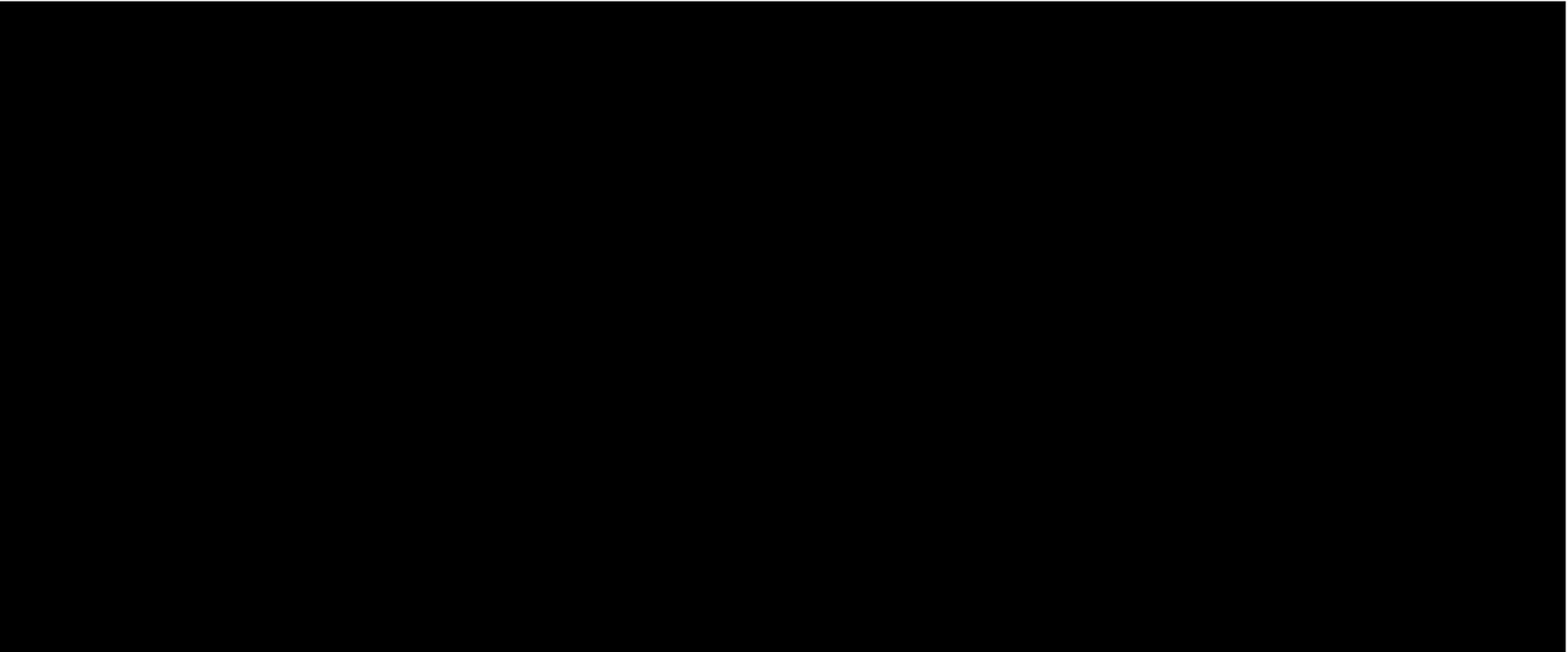
### GRNSW’s future proposals

26.82 On 20 January 2016, GRNSW provided the Commission with a breakdown of its planned expenditure on animal welfare for FY16 - FY20.<sup>532</sup> In relation to the category “training for industry participants” the spread sheet provided as follows:

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<sup>531</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [484]-[489].

<sup>532</sup> GRNSW Response to Order 24 dated 19 January 2016.





- 26.83 GRNSW was asked to identify what the planned expenditure, detailed in the table above, would fund and whether it would be sufficient to meet the welfare recommendations made in the WDA's report of July 2015. In response, GRNSW stated that they intend to
- ... introduce a much greater programme of training and education for industry participants as one of its key animal welfare measures. Completing certain educational courses and outcomes will be a condition of the new tiered licensing system is to be implemented. The amount budgeted mainly comprises staff costs to oversee the education and training program, and costs to develop seminars and resource material.<sup>533</sup>
- 26.84 According to GRNSW, no costs have been allocated to hire external premises as they typically conduct training at clubs. This category in the budget was allocated for catering and data projection.
- 26.85 In relation to the cost of external providers or trainers, GRNSW noted that its new education initiatives are to rely on Registered Training Organisations ("RTO") to conduct the training and that their fees will likely be incurred by industry participants.
- 26.86 On 19 February 2016, GRNSW provided the Commission:
- an overview and estimate of the costs (and duration) of mandatory educational requirements that industry participants would be required to complete in order to be issued with a GRNSW licence or registration; and
  - details about the educational seminars that GRNSW had developed as an interim measure.
- 26.87 In particular, GRNSW outlines its plans and the development of a training program for industry participants.<sup>534</sup> These plans and the costs to participants are referred to in detail in Chapter 27.
- 26.88 In the context of this Chapter, and the financial impact of additional industry participant education on GRNSW, GRNSW outlined its costing for the delivery of the training programs delivered by third party training providers as part of the requirements for participants to be granted licences. GRNSW advised that the costs for the training will be borne by the participants, with a 12 month grace period granted. GRNSW indicated that, "[i]n the event that there is no state subsidy, GRNSW is considering options including a potential controlling body subsidy and non-accredited training that meets the Australian Qualification Training Framework standards."<sup>535</sup> This plan would increase costs for GRNSW, however there are no estimates as to the amounts GRNSW would expend on this measure.
- 26.89 GRNSW also outlined its expenditure on providing training seminars to participants across the State.<sup>536</sup> Further details regarding these seminars can be found in Chapter 27.
- 26.90 GRNSW has so far held two seminars for participants. The first training session at Maitland incurred \$7,871.11 in expenditure and the second session at Richmond cost \$8,590. Over the coming months, GRNSW plans to hold more seminars across NSW for participants in Bathurst, Tamworth, Lithgow, Young, Gunnedah and Potts Park.<sup>537</sup>
- 26.91 Given the relatively low costs of holding the seminars, and the cross use of resources (e.g. staff, seminar facilities), GRNSW's budget for Resources and Education of approximately \$350,000 and rising to approximately \$400,000 by FY20 appears sufficient to cover the costs of these training seminars.

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<sup>533</sup> GRNSW (Supplementary) Response to Order 24 dated 19 January 2016, p. 11.

<sup>534</sup> GRNSW Response to Order 27 dated 19 February 2016.

<sup>535</sup> Ibid, p. 3.

<sup>536</sup> Ibid, p. 6.

<sup>537</sup> Ibid, pp. 11-13.



## 27 Economic sustainability: impact on participants

### Returns via prize money

#### Findings of the Select Committee

- 27.1 Low prize money is a major concern for participants in the greyhound racing industry in New South Wales. For most participants, prize money, and not wagering, is their principal, and in most cases their only, source of income from the industry. When prize money does not meet the expense of participating in the industry, participants may move interstate to continue in the industry. Many will chase the higher prize money at interstate meetings and, from time to time; will race their dogs at those meetings; and many will simply quit the industry.
- 27.2 The NSW Legislative Council's 2014 Select Committee on Greyhound Racing in NSW ("the Select Committee") addressed this issue in some detail in its March 2014 First Report ("Select Committee First Report"). GRNSW had given evidence to the Select Committee that returns via prize money to industry participants equalled approximately \$21.5 million per annum. Many participants were critical of this level of prize money. However, the NSW Greyhound Breeders Owners and Trainers Association ("GBOTA") in its submission to the Select Committee noted that prize money had increased by 47% between 2008 and 2013. However, as another industry participant pointed out, race meetings had increased over the same period by 46%.<sup>538</sup>
- 27.3 The Greyhound Action Group ("GAG") summarised the importance of prize money to industry participants:
- Prize money is the life blood of the industry because it in turn determines the participants' affordability levels to own, train and breed greyhounds ... Given its hobby/past time underpinning, it is not realistic to expect net positive returns for the average participant; losses are the cost of the hobby. However, it is anticipated that the level of loss will be at a level that allows reasonable cost for participation.<sup>539</sup>
- 27.4 Importantly, the Select Committee compared the prize money available in NSW to other states, in particular Victoria. Some participants believed that Victoria had overtaken NSW as the premier state for greyhound racing. Mr Anthony Callaghan was one who held that view. He said:
- [t]wo decades ago, the NSW greyhound racing industry was far and away the leader and most envied of any state. In effect, all the other states had their eye on our prizemoney and status, and regularly entered their very best greyhounds in our Group races. How times have changed! Nowadays, Victoria has been the industry leader for the past 15 years or so, and it is our dogs, breeders and trainers heading to that state.<sup>540</sup>
- 27.5 In 2014, GRNSW paid out a higher proportion of revenue as prize money than Greyhound Racing Victoria ("GRV") (54% compared to 52%). However, GRV was paying an additional \$15.184 million in prize money per annum because its revenue was \$31 million per annum higher than GRNSW.<sup>541</sup>

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<sup>538</sup> Select Committee First Report, p. 17.

<sup>539</sup> Ibid, p. 18.

<sup>540</sup> Ibid, pp. 18-19.

<sup>541</sup> Select Committee First Report, p.19.

27.6 The GAG estimated that the difference between the prize money in NSW and Victoria led to a far greater return to industry participants in Victoria. It estimated that participants in Victoria got back approximately 35% of their costs while in NSW participants received less than 18% of their costs.<sup>542</sup> The GAG concluded that “it is not financially viable for professional or semi-professional trainers to train the average prize money performing dog in NSW, whereas in Victoria it is viable to do so.”<sup>543</sup>

27.7 The Select Committee heard evidence that the lower prize money available in NSW meant that participants conducted more of their racing in Victoria than they would if NSW prize money was higher. It also heard evidence that some trainers had moved their entire operations to Victoria. Mr Paul Wheeler, the most successful greyhound industry participant in NSW, told the Select Committee:

... [W]e were forced many years ago to shift the majority of our kennels racing activities interstate for racing due to the poor returns via prize money in this state [NSW]. Approximately 95% of our annual income is derived from our racing activities interstate. If we did not make that move approximately 15 to 20 years ago we would be out of business today. This is because the greyhound industry in NSW is so unviable compared to other states in Australia and it could not support our operation.<sup>544</sup>

27.8 Then GRNSW CEO Mr Brent Hogan stated that the loss of the highest quality greyhounds interstate would result in a lesser quality of racing in NSW. He mentioned that “for those consumers who bet based on quality that is obviously negatively impacting on us”.<sup>545</sup> Mr Hogan did not detail how GRNSW was being negatively impacted by the exodus of top quality greyhounds, but common sense suggests that consumers who look for quality racing will wager less when the quality of fields is less than top quality and that this will impact on GRNSW revenues. The Select Committee made the following finding concerning prize money in the NSW industry:

Returns to trainers and owners do not cover costs, which leads to the loss of quality dogs to Victoria and elsewhere, a reduced number of industry participants and contributes to making existing clubs and tracks unviable.<sup>546</sup>

### ***Evidence given to the Commission***

27.9 The only evidence of substance that the Commission received regarding prize money and the problems associated with prize money levels was from Ron Arnold, Chairman of NSW GBOTA and the Chairperson (and country clubs representative) of the Greyhound Racing Industry Consultation Group (“GRICG”) and an industry participant who appeared before the Commission.

27.10 The industry participant commented that she was happy that GRNSW had increased spending on welfare since the live baiting scandal. However, she thought that the money should not be taken from the prize money pool. She gave the following evidence to the Commission:

Q. Do you think the industry would improve significantly if prize money was increased by cutting down the number of tracks?

A. Yes, definitely. We've had our prize money decrease since the live baiting incident or welfare, which is great. Like it's great that the money - there's more welfare. I don't believe in anything more than welfare of greyhounds. I absolutely love greyhounds. I adore them. I think they're the most beautiful animals. But why take it from us? They're [GRNSW] just increasing, increasing staff

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<sup>542</sup> Ibid, p. 20.

<sup>543</sup> Ibid, p. 21.

<sup>544</sup> Ibid, p. 22.

<sup>545</sup> Ibid, p. 22.

<sup>546</sup> Ibid, Finding 1, p. 41.

at Rhodes. They're putting more people on. They've just put another veterinarian on. There's that many people that work in that office, it's ridiculous.<sup>547</sup>

- 27.11 Mr Arnold told the Commission that “all racing is about money” and gave his views on current prize money levels:

... So, at the end of the day, yes, it's one of those things where grading is, I think prize money, and that's why I keep saying, if you had better prize money in the provincial and country area, a trainer based at Richmond would probably say, “Look, I'm happy to go to Wenty, but I probably can't win, but if I go for a drive to Goulburn or out to Mudgee, I'm racing a few of my dogs and it's worth the drive because I can pick up 500 or 1,000 or whatever it be.” So, I think we're getting a squash in the TAB circuit of lower grade dogs cause they're turning up, nine times out of 10, to pick up their 50 bucks unplaced prized money 'cause that feeds the dog. Appearance money, particularly at Wentworth Park, should be far greater than \$45.<sup>548</sup>

- 27.12 Mr Arnold discussed how he believes higher levels of prize money would lead to less dogs being euthanased.

Q. Can I ask you this - whether there are steps that you can see could be taken to reduce the number of dogs that are euthanased?

A. Yes, make the prize money better, full stop. Like, at the end of the day, most dogs that are put down are put down because, in the eyes of the training establishment, they're too slow. Now, that means they can't earn money. Why spend \$50 a week on that dog, feeding it and trialling it and all that, keeping them around, if it can't earn anything? But if there's a race for it, or a bloke goes, “Well, you know, I can get 50 bucks for turning up at Mudgee to race him,” that keeps him going cause that's his feed bill. Now, it's a bit, like, with all due respects, I think, the Horses now, and even though it doesn't cover a Waterhouse or Waller weekly cost, but I think they get \$200 turn-up fee. That's not a bad little earn. If you're a private trainer, it wouldn't cost you \$200 to feed that horse, and you can get in a lot easier because you just nominate for a race and, you know, most races, they're allowed sort of 16, 17 starters, even though they don't get them nine times out of 10. So you can get your 200, which covers a fair slice of your cost. And in the dog case, dogs are just, by so far, the cheapest avenue to rear and race. Like, there's no cost in a greyhound for a trainer. He just puts the dog in his car, drives to the track, they race, puts it back in the car and drives home. There's no float hire, there's no shoeing, there's no bridle and gear. It is no cost at all. It is so cheap, but the problem is, at the end of the day, if you've got a half a dozen of them and all of a sudden they're not winning and they're not doing anything and they're costing your 50 bucks a week, a hundred bucks a week, you go, “I better get rid of those two. I'll try to get those two good ones.” Whereas, if you could move those dogs onto another area where you can say, “Well, at least that dog” - and the grading system allows him to race till he's five years of age and he's picking up 50 or a 100 bucks every time he goes round, he'll keep him, that's what it's all about.<sup>549</sup>

### **Joint Working Group**

- 27.13 The Joint Working Group (“JWG”) discussed the issue of prize money in its report to GRNSW dated 29 January 2016. The JWG said that “to ensure the future sustainability of the NSW greyhound racing industry, it is necessary to improve the wagering and financial reward landscape.”<sup>550</sup> In particular it noted that actions should be identified that “optimise reward and prize money allocations to generate maximum impact in terms of supporting the achievement of animal welfare and financial sustainability objectives”.<sup>551</sup> Based on this recommendation, the JWG recommended a review of prize money be conducted.

- 27.14 The JWG summarised the current prize money landscape in NSW:

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<sup>547</sup> T23.20-28.

<sup>548</sup> On 19 February 2016.

<sup>549</sup> Ibid.

<sup>550</sup> JWG Report, p. 82.

<sup>551</sup> JWG Report, p. 82.

Prizemoney levels in NSW are detailed in the Club Funding Policy, with GRNSW allocating funds to TAB clubs to provide for a minimum prizemoney amount for TAB race meetings. These funds provide between \$60 (for a third place in Maiden Category C TAB Race meeting) and \$5,700 (for a first place in a third/FFA grade Category A TAB Race meeting). Clubs are able to 'top up' the funding provided by GRNSW from their own sources (e.g. sponsorship).<sup>552</sup>

27.15 Current prize money amounts are detailed in the tables below.<sup>553</sup>

**Table 27.1 Category A TAB race meetings**

	Wentworth Park Saturday (A1)		Wentworth Park Friday (A2)	
	Sprint	Distance	Sprint	Distance
3rd/FFA				
1st	5,178	5,700	3,360	3,696
2nd	1,473	1,615	740	816
3rd	737	808	346	384
Total	7,388	8,123	4,446	4,896
Travel	45	45	45	45
4th Grade				
1st	4,418	4,855	3,360	3,696
2nd	1,283	1,411	740	816
3rd	637	694	346	384
Total	6,338	6,960	4,446	4,896
Travel	45	45	45	45
5th Grade				
1st	4,133	4,546	3,168	3,485
2nd	1,174	1,292	672	740
3rd	589	646	317	346
Total	5,896	6,484	4,157	4,571
Travel	45	45	45	45

Source: GRNSW website, "Club Funding Policy"

<sup>552</sup> Ibid.

<sup>553</sup> GRNSW website, "Club Funding Policy (updated 12 February 2015)":  
<<http://www.thedogs.com.au/Uploads/12022015%20Club%20Funding%20Policy.pdf>> (accessed 29 May 2016).

**Table 27.2 Category B TAB race meetings**

	TAB B meetings	
	Sprint	Distance
<b>3rd/FFA</b>		
1st	1,400	1,680
2nd	410	490
3rd	205	245
Total	2,015	2,415
Travel	35	35
<b>4th Grade</b>		
1st	1,150	1,400
2nd	330	410
3rd	165	205
Total	1,645	2,015
Travel	35	35
<b>5th Grade</b>		
1st	1,080	1,400
2nd	315	410
3rd	155	205
Total	1,550	2,015
Travel	35	35
<b>Maiden</b>		
1st	830	830
2nd	240	240
3rd	115	115
Total	1,185	1,185
Travel	35	35

Source: GRNSW website, "Club Funding Policy"

**Table 27.3 Category C TAB race meetings**

	TAB C meetings	
	Sprint	Distance
<b>3rd/FFA</b>		
1st	700	840
2nd	205	245
3rd	105	125
Total	1,010	1,210
Travel	35	35
<b>4th Grade</b>		
1st	575	700
2nd	165	205
3rd	85	105
Total	825	1,010
Travel	35	35
<b>5th Grade</b>		
1st	540	700
2nd	165	205
3rd	80	105
Total	785	1,010
Travel	35	35
<b>Maiden</b>		
1st	415	415
2nd	120	120
3rd	60	60
Total	595	595
Travel	35	35

Source: GRNSW website, "Club Funding Policy"

- 27.16 The JWG's main reason for recommending that greater prize money be available to participants was obviously commercial, not animal welfare, considerations.
- 27.17 The JWG said that "the current allocation of prizemoney by GRNSW to clubs and races is not adequately focussed on attracting greater participants, attendees and media coverage, and raising the overall interest of greyhound racing."<sup>554</sup> Neither the JWG, nor GRNSW, nor any other witness to the Commission gave evidence as to how greater prize money would lead to more attendees at race tracks, more media coverage, or the overall interest in greyhound racing. However, the Commission accepts that higher prize money will assist in doing so. Economic theory and common sense suggests that higher prize money would give the owners of the better greyhounds, wherever situated, greater incentive to nominate their dogs for higher prize money races in NSW. As Mr Hogan indicated, higher quality racing attracts higher wagering. Higher quality racing is also likely to attract greater attendances. Experience teaches that in all sports, the star performers attract the greatest crowds and the greatest media coverage whether it is a tennis player such as Novak Djokovic or a racehorse such as Black Caviar.
- 27.18 The JWG also says that it is "concerned that the prizemoney allocation is not used to support the achievement of welfare objectives, such as providing an incentive to keep greyhounds racing longer."<sup>555</sup> The information received from Mr Arnold supports the view that increased prize

<sup>554</sup> JWG Report, p. 82.

<sup>555</sup> Ibid.

money will have animal welfare benefits because it will keep dogs racing for longer and reduce euthanasia rates.<sup>556</sup>

27.19 However, so far as animal welfare is concerned, higher prize money may also have a downside. It gives breeders the incentive to breed more dogs leading to more dogs being euthanased because they are slower or unsuitable for racing. In that respect, increased prize money may have the same consequences for animal welfare as the now abandoned Blue Paws scheme. Keeping dogs racing for longer also increases their chance of suffering injury.

27.20 The JWG's recommendations to GRNSW were:

- Undertake a review of prizemoney with a view to increasing average prizemoney per race, while being consistent with other elements of the reform package
- Considers application of a flatter prizemoney schedule with a minimum prizemoney target of \$1,000 to the winner of TAB races, alongside fixed proportions for prizemoney distribution for places
- As part of the preparation of the Metropolitan Racing Strategy...that the metropolitan prizemoney distribution model be reviewed. This should identify the best and most appropriate format, alongside consideration of grading approaches and how metropolitan racing might best be showcased.<sup>557</sup>

#### ***Reasons for lower prize money in NSW than Victoria***

27.21 The Select Committee examined the reasons for lower prize money being awarded in NSW compared to Victoria. It put the difference down to two main factors: the different inter-code agreement in Victoria; and the differing wagering tax levels between the states.<sup>558</sup> When the Select Committee reported, the tax rates between the two states were significantly different, with \$4.70 per \$100 bet being returned to the racing industry in NSW, compared with \$7.90 being returned to the industry per \$100 bet in Victoria.

27.22 In his evidence, Mr Hogan told the Select Committee that the Victorian inter-code agreement allocates money to the racing codes with at least 50% of the allocation being based on the market share of each code. The remainder of the funds are based on a fixed percentage, which according to Mr Hogan is greater than GRNSW's 13% share under the NSW Inter-Code Deed ("ICD").<sup>559</sup>

27.23 The differing wagering tax rates in Victoria compared to NSW has been addressed by the NSW Parliament which passed the *Betting Tax Legislation Amendment Act 2015* in November 2015. This Act will bring NSW's wagering tax rates in line with those in Victoria by the end of FY2020. Until then, the tax rate will gradually decrease, resulting in a greater share of revenue each year until FY2020 for each racing code in NSW.

#### ***GRNSW's forecast prize money and revenue***

27.24 Given that the NSW Parliament passed the legislation implementing tax harmonisation with Victoria (as well as removing the cap on Race Field Information Use Fees ("RFIU Fees")), GRNSW will very probably receive more revenue in future years than it has in the past. However, sports betting has continually increased its share of the betting market in recent years to the detriment of the three racing codes. If it continues to grow at its present rate, the revenue of the racing codes may even decline.

<sup>556</sup> 19 February 2016: T35.11-37.

<sup>557</sup> JWG Report, Recommendation 18, p. 84.

<sup>558</sup> Select Committee First Report, p. 21.

<sup>559</sup> Ibid, p. 21.

- [REDACTED]
- 27.25 Financial documents produced to the Commission by GRNSW reveal that, despite the likely increases in revenue, GRNSW has not forecasted significant increases to prize money to the end of FY2020.

[REDACTED]

[REDACTED]

Source: GRNSW Response to Order 24 dated 19 January 2016

- 27.26 In response to questions put by PwC to GRNSW regarding prize money, GRNSW responded:

Prize money levels will be considered after the other key issues identified in relation to welfare, education and integrity are provided for, along with any other matters directly identified via the Special Commission.

***GRNSW's recent proposed changes to prize money***

- 27.27 While the budget forecasts GRNSW produced to the Commission showed there would be very little, if any, increase in prize money expenditure before the end of FY20, on 3 May 2016 GRNSW announced that a new prize money structure was being considered. The proposal would see “an overall prizemoney increase to the sport of approximately \$1.1 million”.<sup>560</sup> GRNSW has stated that the aim of the new structure is “to provide a fairer and more balanced distribution of prizemoney across all sectors of TAB racing.”<sup>561</sup>
- 27.28 The key change in the proposal is the replacement of A2 grade racing (which currently only takes place at Wentworth Park), with ‘Metropolitan Entry’ racing, which will be conducted at Wentworth park each Wednesday and, additionally, at Dapto, Richmond, The Gardens and Gosford at 13 meetings per year. The result is that those 13 meetings at each track will award higher levels of prize money than the previous maximum level awarded at those tracks under TAB B racing.
- 27.29 The levels of prize money for the remaining racing categories will stay largely the same, with some small changes in some categories. A new race distance, ‘Short’ will also be introduced. The proposed structure is contained in the tables below.

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<sup>560</sup> Article “Feedback Sought on New Prizemoney Structure” by GRNSW, 3 May 2016, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7579>> (accessed 29 May 2016).

<sup>561</sup> Article “Feedback Sought on New Prizemoney Structure” by GRNSW, 3 May 2016, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7579>> (accessed 29 May 2016).

**Table 27.5 GRNSW proposed changes to prize money structure, Category A**

	Short	Sprint	Distance
<b>3rd Grade +</b>			
1st	5,060	5,060	5,625
2nd	1,550	1,550	1,720
3rd	1,165	1,165	1,280
Total	7,775	7,775	8,625
<b>4th Grade</b>			
1st	4,340	4,340	5,135
2nd	1,330	1,330	1,580
3rd	1,000	1,000	1,185
Total	6,670	6,670	7,900
<b>5th Grade</b>			
1st	4,030	4,135	4,760
2nd	1,240	1,270	1,460
3rd	930	950	1,010
Total	6,200	6,355	7,230

Source: GRNSW website, "Feedback Sought on New Prizemoney Structure"

**Table 27.6 GRNSW proposed changes to prize money structure, Metro entry**

	Short	Sprint	Distance
<b>3rd Grade +</b>			
1st	1725	2310	2800
2nd	530	710	860
3rd	395	530	640
Total	2650	3550	4300
<b>4th Grade</b>			
1st	1465	2050	2245
2nd	450	630	690
3rd	335	465	515
Total	2250	3145	3450
<b>5th Grade</b>			
1st	1200	1830	2015
2nd	370	560	620
3rd	275	420	415
Total	1845	2810	3050
<b>Maiden</b>			
1st	830	830	830
2nd	255	255	255
3rd	190	190	190
Total	1275	1275	1275

Source: GRNSW website, "Feedback Sought on New Prizemoney Structure"

**Table 27.7 GRNSW proposed changes to prize money structure, Category B**

	Short	Sprint	Distance
<b>3rd Grade +</b>			
1st	1,300	1,400	1,580
2nd	410	450	550
3rd	300	330	370
Total	2,010	2,180	2,500
<b>4th Grade</b>			
1st	1,070	1,270	1,440
2nd	330	375	450
3rd	245	280	360
Total	1,645	1,925	2,250
<b>5th Grade</b>			
1st	1,020	1,115	1,300
2nd	315	350	410
3rd	235	260	300
Total	1,570	1,725	2,010
<b>Maiden</b>			
1st	830	830	830
2nd	255	255	255
3rd	190	190	190
Total	1,275	1,275	1,275

Source: GRNSW website, "Feedback Sought on New Prizemoney Structure"

**Table 27.8 GRNSW proposed changes to prize money structure, Category C**

	Short	Sprint	Distance
<b>3rd Grade +</b>			
1st	825	830	860
2nd	250	260	280
3rd	190	195	200
Total	1,265	1,285	1,340
<b>4th Grade</b>			
1st	650	780	820
2nd	210	240	260
3rd	150	180	190
Total	1,010	1,200	1,270
<b>5th Grade</b>			
1st	640	715	735
2nd	200	225	240
3rd	130	180	225
Total	970	1,120	1,200
<b>Maiden</b>			
1st	570	570	570
2nd	170	170	170
3rd	130	130	130
Total	870	870	870

Source: GRNSW website, "Feedback Sought on New Prizemoney Structure"

- 27.30 Additionally, GRNSW states that the new structure will reduce the travel subsidy for trainers with more than one greyhound racing at a TAB meeting, and will reduce club funding for Group race prize money.<sup>562</sup>
- 27.31 Overall, the proposed structure does not significantly increase prize money, but restructures it. While GRNSW is seeking feedback from participants, it does not appear to the Commission that the new structure will be sufficient to allay the various concerns raised above about the consequences of low prize money in the industry.
- 27.32 Further, in its June 2016 submission to the Commission, GRNSW's modelling recorded (in the event of a reduction in race meetings) that current prize money levels were maintained in a proportional manner.

## Cost of welfare initiatives to participants

- 27.33 GRNSW has indicated that it intends to introduce a number of new initiatives for which the industry participants will bear the cost. These initiatives will primarily be in education, licencing and rehoming of greyhounds. In its response to Order 24, GRNSW stated that it was:

... still in the process of developing a more robust understanding of the impact of its new animal welfare initiatives on industry participants. As initiatives continue to be refined, and potential costs quantified, a clearer understanding of the financial impact on industry participants can be developed.<sup>563</sup>

- 27.34 Importantly, GRNSW indicated that it may support some participants to cover the costs of increased welfare requirements, and that the overall aim is to improve the welfare of racing greyhounds:

GRNSW may consider providing support to certain participants; for example, supporting hobby breeders who breed and whelp one or two greyhounds should be able to continue to thrive, provided they are able to demonstrate a proven track record of compliance and commitment to upholding animal welfare. That said, the overall aim of the changes is to ensure that only breeders who are informed and educated on their obligations and the costs associated with raising a greyhound at all stages of their lifecycle remain in the industry. It is anticipated that many existing breeders who cannot meet the mandatory education and regulatory requirements will exit the industry.<sup>564</sup>

### Education

- 27.35 Participant education was referred to in the broader context of breeding/wastage reforms in GRNSW's January 2016 Final Response to the Commission's Issues Paper on Overbreeding and Wastage ("Breeding Issues Paper") under the heading 'Measures to Reduce Breeding'. GRNSW indicated that as part of the breeder licences and breeding restrictions introduced on 1 July 2015, applicants for a breeder's licence must read the Breeder's Education Package and complete a questionnaire.<sup>565</sup> Tiered breeding licences were categorised according to the level of educational attainment. GRNSW noted that "the mandatory education component will result in an increased cost to breeders (as well as other licence categories) to maintain licenses and keep

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<sup>562</sup> Article "Feedback Sought on New Prizemoney Structure" by GRNSW, 3 May 2016, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7579>> (accessed 29 May 2016).

<sup>563</sup> GRNSW Supplementary Response to Order 24 dated 19 January 2015.

<sup>564</sup> *Ibid.*

<sup>565</sup> GRNSW, Response 20a to Breeding Issues Paper dated 11 January 2016, p. 28.

up to date with education competency units”.<sup>566</sup> The estimated costs of Certificate II and III Competency Units were as follows:<sup>567</sup>

**Table 27.9 Estimated costs for Certificate II and Certificate III Competency Units**

Licence	Education Cost	Qual Type
Catcher	\$260	Skill Set (1 Unit)
Rearer	\$867	Skill Set (3 units)
Breeder	\$867	Skill Set (3 units)
Whelping	\$1,214	Skill Set (4 units)
Educator	\$867	Skill Set (3 units)
Attendant	\$1,387	Skill Set (6 units)
Trainer L3	\$1,995	Skill Set (6 units)
Trainer L2	\$3,640	Certificate II*
Trainer L1	\$6,940	Certificate III

Source: GRNSW provided in Final Response to Breeding Issues Paper dated 11 January 2016, p 31.

27.36 GRNSW dealt with participant education more directly under the heading ‘Best Practice Socialisation, Rearing, Education and Training’.<sup>568</sup>

27.37 GRNSW noted the report prepared by the Australian Working Dog Alliance, Review and assessment of best practice rearing, socialisation, education and training methods for greyhounds in a racing context (“Best Practice Review”), specifically their recommendation for a structured education and training program for young greyhounds that is aimed to enhance their racing careers and maximise their capacity to be a companion animal later in life. GRNSW said that it supported these recommendations and “recognises that the new licensing and education scheme schedule to commence on 1 July 2016 will largely implement this recommendation”.<sup>569</sup> It also noted that:

140. GRNSW and other controlling bodies are currently in the process of designing a number of courses for the new licensing system. Relevant to the whelping, rearing and educator licenses are courses including the ‘Greyhound Whelping Skill Set’ and the ‘Greyhound Rearing Skill Set.’ Attaining these skill sets will require the successful completion of units of education such as ‘Raise Greyhound Litters’, ‘Rear Greyhounds’ which will require candidates to demonstrate knowledge of enrichment and socialisation needs of greyhounds.
141. Prior to the commencement of the national licensing system, GRNSW intends to develop and deliver a program of educational seminars and materials drawn from greyhound and other working dog industry members. These materials will provide guidance to participants on certain socialisation methods. The first two training seminars took place on 22 November 2015 at Maitland and 6 December 2015 at Richmond.
142. Pending the development of the more comprehensive licensing scheme at a national level, GRNSW is also developing an interim NSW system to register all industry participants that may have custody/possession of a greyhound at any point in its lifecycle. On 22 December 2015, GRNSW’s online services and database system (OzChase) introduced the capability to attribute ‘rearing’ and ‘educator’ registration categories to industry participants. The ability to apply business rules to these classifications for licensing purposes will come into effect in mid 2016.<sup>570</sup>

<sup>566</sup> Ibid, p. 30.

<sup>567</sup> Ibid, p. 31.

<sup>568</sup> Ibid, p. 34.

<sup>569</sup> Ibid, p. 40.

<sup>570</sup> Ibid.

- 27.38 At the time of this response to the Breeding Issues Paper, January 2016, GRNSW did not provide an estimate of the cost of developing the new education and training materials to GRNSW or of the cost to be incurred by participants in respect of mandatory education.
- 27.39 More recently, GRNSW has provided the Commission with an updated table of estimated costs of the education courses for participants.<sup>571</sup>

**Table 27.10 Hours and costs of education – licence education**

Licence type	Course (qualification or skill set)	RGR08 v2	RG R08 v3	# Units	Estimated cost	Min. hours	Max. hours	Comments
Trainer L1	Greyhound Racing Cert III	No	Yes	13	\$4,960.30	426	715	Based on Certificate III (Advanced Stablehand)**
Trainer L2	Greyhound Racing Cert II	Yes	Yes	16	\$3,640	338	393	Existing certificate nominal hours set
Trainer L3	Training Operations	Yes	Yes	6	\$1,856.80	205	305	Existing skill set: nominal hours set
Owner	1 Competency Unit	Yes	Yes	1	??	??	??	No national consensus
Catcher	1 Competency Unit	No	Yes	1	\$227.50	15	15	1 Competency Unit
Attendant	Attendant	Yes	Yes	4	\$910	100	120	Existing skill set: nominal hours set
Breeder	Breeder	No	Yes	3	\$805.45	110	120	New: estimated on competency unit guide
Studmaster	Studmaster	No	Yes	3	\$805.45	110	130	New: estimated on competency unit guide
Whelper	Whelping	No	Yes	4	\$1,159.90	150	170	New: estimated on competency unit guide
Rearer	Rearing	No	Yes	3	\$805.45	110	120	New: currently under development*
Educator	Primary Educator	No	Yes	3	\$805.45	110	110	New: estimated on competency unit guide

Source: GRNSW Response to Order 27 dated 19 February 2016

- 27.40 In relation to these costs, GRNSW noted:

Due to a restructure of National Industry Skills Councils (previously Agrifood Skills) under the Department of Education and Training (Federal) GRNSW is uncertain of the date of national endorsement of the training package. Therefore, State Training Services, under the NSW Department of Industry, have not put Certificate III in the Smart and Skilled List for 2016, so it is unknown whether the training will be eligible for government subsidisation.

In the event that there is no state subsidy, GRNSW is considering options including a potential controlling body subsidy and non-accredited training that meets the Australian Qualification Training Framework standards.

Participants will be required to complete a minimum of two units (RGRCMN203 Comply with racing industry ethics and integrity and RGRPSG212 Care for greyhound health and welfare) during the first twelve months of their transitional licence period. However, GRNSW will likely provide participants a grace period to meet the new requirements.<sup>572</sup>

<sup>571</sup> Spread sheet "Hours and Costs of Education": GRNSW Response to Order 27 dated 19 February 2016.

<sup>572</sup> GRNSW Response to Order 27 dated 19 February 2016.

## Licensing

27.41 The costs to industry participants of licensing are linked to the costs of education, with the courses referred to above being mandatory for a participant to obtain their various licences. In regard to specific licensing and registration fees that GRNSW may impose on participants, GRNSW has informed the Commission that it is currently uncertain of those costs going forward. The current fees payable by participants is found on GRNSW's website.<sup>573</sup> They are as follows:

**Table 27.11 GRNSW licensing and registration fees (current)**

Service	Fee
Naming Application	\$80.00
Ownership Transfer	\$44.00
Litter Registration	\$150.00
Syndicate Registration	\$37.00
Partnership Registration	\$37.00
Owner / Trainer Licence*	\$75.00
Public Trainer Licence*	\$135.00
Attendant Licence*	\$40.00
Stud Master Licence*	\$130.00
Duplicate Photo Licence	\$47.00
Registration of Service	\$42.00
Greyhound Lease	\$44.00
Duplicate Greyhound ID Card	\$47.00
Duplicate Certificate	\$47.00
Bookmaker Licence	\$198.00
Bookmaker Clerk Licence	\$58.00
Trial Track Registration	\$65.00
Trial Track Manager	\$33.00
Trial Track Assistant Manager	\$17.00

Source: GRNSW website, "GRNSW Fee Schedule"

27.42 GRNSW has not provided the Commission with sufficient information to be able to estimate the costs of future licencing arrangements for participants. However, it is almost certain that fees will increase and new fees will be levied. For example, GRNSW said, in their response to the Breeding Issues Paper:

At present, GRNSW does not impose an application fee for obtaining a breeder licence although it would be an appropriate mechanism to offset costs and manage demand going forward and is under active consideration.<sup>574</sup>

## Rehoming fees

27.43 GRNSW has indicated their intention to lower rehoming fees for participants. In its response to Order 27 dated 19 February 2016, GRNSW said:

[a]t present there are no proposals to change the entry fee [to the GAP program] which is currently set at \$50. This fee has been recently reduced to \$50 from \$100. However, further reduction may be considered in the future but must balance the policy to impress owner responsibility across industry without limiting access to the program.<sup>575</sup>

27.44 In this respect, it appears the rehoming costs to participants will be negligible. The welfare concerns related to rehoming of greyhounds at the conclusion of their racing life is discussed in

<sup>573</sup> GRNSW website, "GRNSW Fee Schedule": <<http://www.thedogs.com.au/DPPage.aspx?spid=120&id=12>> (accessed 25 May 2016).

<sup>574</sup> GRNSW, Response 20a to Breeding Issues Paper dated 11 January 2016, p. 30.

<sup>575</sup> GRNSW Response to Order 27 dated 19 February 2016, pp. 28-29.

Chapter 18. The financial impact on the industry of current and future rehoming requirements is also discussed in that Chapter.

***Other potential costs to participants from improved welfare measures***

27.45 Participants in the industry will also incur costs in improving kennelling facilities, in increased veterinary services and in the socialisation of greyhounds. It was not possible for the Commission to quantify these costs.

***The outlook for industry participants***

27.46 Speaking generally, if the industry continues, the outlook for participants is bleak. The reforms envisaged by GRNSW will add to the cost of owning, training and breeding while increases in prize money are at best uncertain. The opportunity to increase prize money to meet these rising costs will be hobbled by the reforms that GRNSW must make to enable the industry to meet welfare standards that are even arguably acceptable to the community.



# 28 Social contribution of the greyhound racing industry in NSW

## Introduction

- 28.1 Potentially at least, the greyhound racing industry has the capacity to make both an economic and a social contribution to the State of NSW. In the course of its investigations, the Commission examined both of these aspects in detail. The economic contribution made by the greyhound racing industry, including whether the industry is financially viable, is dealt with in other parts of this report, principally Chapters 25 to 27.
- 28.2 This Chapter examines the social impact made by the greyhound racing industry in NSW. This includes both positive and negative impacts that the Commission identified. In assessing the social impact made by the industry, the Commission has had the benefit of evidence from witnesses and reviewing extensive information and documents obtained by the compulsory Orders directed to persons and organisations, including greyhound racing clubs. The Commission also called for, and received written submissions from, interested persons, including in response to an Issues Paper that the Commission published in December 2015 (“Governance and Social Contribution Issues Paper”).
- 28.3 As will be seen, for many participants, involvement in the greyhound racing industry provides personal enjoyment and the capacity for social interaction. Other forms of potential social benefit, described below, are also identified. These are positive social aspects of the greyhound racing industry. They are important matters, including for the individuals concerned.
- 28.4 Questions arise, however, as to the extent to which such positive social aspects from the greyhound racing industry translate to benefits for the broader community. Attendances at race track meetings are, at best, modest, and the rationalisation of the industry that Greyhound Racing New South Wales (“GRNSW”) has foreshadowed is likely to result in the cessation of race meetings at a number of race tracks. While such industry rationalisation may be unavoidable, its effect may be to reduce the extent of the social contribution provided by the industry in future.
- 28.5 Further, the perceived positive social benefits provided by the greyhound racing industry need to be considered in context. There are strong countervailing factors that should not be overlooked. Through its investigations, the Commission has examined and exposed a number of such countervailing, negative factors. They include matters such as inadequate animal welfare standards, the practice of live baiting and industry deception of the public in connection with the extent of greyhound euthanasia and of the injuries suffered by greyhounds on race tracks. These matters are dealt with in detail in other parts of this report, including Chapters 3 and 4.

## Positive social impact of the greyhound racing industry

- 28.6 A number of positive social benefits from the greyhound racing industry can be identified. The positive social benefits tend to overlap but, in broad terms, can be characterised as: (i) opportunities for social and family interaction; (ii) contribution to a healthy lifestyle; (iii) use of race track facilities for community events and hired functions; and (iv) involvement of clubs in community programs and charitable causes.
- 28.7 In addition, the greyhound racing industry provides employment opportunities for some persons and is said to provide an economic input for local communities. These factors have both

pecuniary and non-pecuniary aspects, with employment able to instil a sense of self-esteem and independence in people.

## Opportunities for social and family interaction

28.8 Many industry participants told the Commission about the ways in which their involvement in the industry enriched their own lives in a sustained and meaningful manner. Participants spoke, in genuine terms, about the enjoyment they receive from engaging with other people in the industry at race meetings and the like. This also arises in a context where, because of its lower cost structures, people in mid or low income demographics may be able to participate in greyhound racing when they might never be able to afford a racehorse or pacer.

28.9 One participant, who had been involved in greyhound racing for 60 years, described the industry as “the glue that brings us all together on a regular basis.” The same participant told the Commission that greyhound racing played a big part in the lives of her family and that:

Socially, it is a very healthy environment. When we go to the races, we intermingle with many different people, and get to become friends with them.<sup>576</sup>

28.10 She described greyhound racing as “part of our Australian culture.”<sup>577</sup>

28.11 Another industry participant, who has been a hobby trainer for 40 years, told the Commission:

I usually take my wife with me to the races where more often than not we meet up with people we’ve gotten to know over the years. We just enjoy the social interaction and if we can come away with some prize money, all the better.<sup>578</sup>

28.12 A further industry participant, who has been an owner-trainer for 25 years, spoke of the importance of the social interaction the industry provided to his wife and him. He told the Commission:

The social aspect of the industry is very important to us as we keep to ourselves, the only time my wife and I venture from our property is to travel with, race with and communicate with other owners and trainers enjoying the same passion for our love of the dogs. We don’t make much monetary gains, that’s not important to us the most important thing is having fun with the hobby that has been our lives for decades and hopefully decades to come.<sup>579</sup>

28.13 To similar effect, another industry participant said that greyhound racing adds to the social fabric of our society and that:

... it is a healthy pastime, it keeps families together, gives people the opportunity to meet regularly and it teaches children responsibility of looking after pets.<sup>580</sup>

28.14 Another industry participant referred to the low-cost structure involved in greyhound ownership and told the Commission:

Because of its affordability, excitement and the camaraderie of the participants, greyhound racing has brought endless joy to thousands of ordinary citizens, most of whom being quintessential battlers, could never afford to own a racehorse or pacer.<sup>581</sup>

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<sup>576</sup> Noelene Holloway, Response 1 to Governance and Social Contributions Issues Paper dated 9 December 2015, p. 1.

<sup>577</sup> Ibid.

<sup>578</sup> Joe Baldacchino, Response 2 to Governance and Social Contributions Issues Paper dated 10 December 2015, p. 2.

<sup>579</sup> Roger Sandes, Response 27 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 1.

<sup>580</sup> Susan Absalom, Response 16 to Governance and Social Contributions Issues Paper dated 14 January 2016, p. 4.

<sup>581</sup> Jeff Collerson, Response 5 to Governance and Social Contributions Issues Paper dated 15 December 2015, p. 1.

- 28.15 In its submission in response to Governance and Social Contribution Issues Paper, GRNSW described the greyhound racing industry as an integral part of the culture and social fabric through rural, regional and metropolitan areas of the State. GRNSW further said:

For many participants greyhound racing is a lifestyle, giving them a sense of belonging to their communities. There are many members who chiefly socialise within the greyhound community and have been brought up with the sport. Often, the connection of participants to greyhound racing is through parents and grandparents: multiple generations of family groups intrinsically connected with the sport.<sup>582</sup>

## Healthy lifestyle

- 28.16 A number of industry participants, many of them hobby trainers, told the Commission that their involvement in the greyhound racing industry contributed to a healthy lifestyle. Owning greyhounds entails a responsibility to ensure that they receive regular exercise. In many instances, this, in turn, leads the owner to take the dog for walks. It provides an incentive to get out of bed and to take regular, early morning exercise. Indeed, for some hobby trainers, the greyhound was first acquired as a means of ensuring exercise for the owner, after some previously identified health concern for the owner.
- 28.17 One industry participant, who has been a hobby trainer for many years, told the Commission that, “[t]he hobby keeps me active and gives me something to look forward to on a daily basis.”<sup>583</sup> The participant obtained enjoyment from walking his dog and taking it to trial tracks. Another participant, who similarly pointed to the physical health benefits arising from his involvement with greyhounds, told the Commission that, a common scenario heard among industry participants is that the need to walk the greyhounds “gets me out of bed”.<sup>584</sup>
- 28.18 Another industry participant said that, “the health aspect is an overlooked contribution greyhound racing makes to society”. He said that in his discussions with new participants in the industry:

The common thread was: ‘I had a heart attack’ or ‘I was overweight’ so ‘my doctor told me to get more exercise. A mate at my local Bowling Club had a greyhound and advised me to get one and here I am with a winner. If you have a pet dog and you wake up to find the rain pouring down, you roll over and go back to sleep. But with a greyhound, you have to take them for a walk for an hour.’<sup>585</sup>

- 28.19 The same participant said: “This ‘forced’ exercise for participants also contributes to the health of younger owners and trainers which in turn reduces medical costs to the taxpayer.”
- 28.20 Another industry participant told the Commission that adolescents became interested in greyhounds and that this provided an alternative to socially destructive pastimes such as using illicit drugs. He identified his local region as having problems with methyl amphetamine (ice) and said, “[when] young people go to the races and get interested in racing and seeing the dogs run, this takes away the need for these drugs.” He also said, “I have seen this myself so there are massive social impacts if the track was closed.”<sup>586</sup>

## Use of club facilities for community events and hired functions

- 28.21 GRNSW and industry participants pointed to the use of greyhound club facilities for community events and other functions as providing advantages to the general community. GRNSW

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<sup>582</sup> GRNSW, Response 26 to Governance and Social Contributions Issues Paper dated 15 January 2016, [111].

<sup>583</sup> Joe Baldacchino, Response 2 to Governance and Social Contributions Issues Paper dated 10 December 2015, p. 2.

<sup>584</sup> Glenn Midson, Response 28 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 2.

<sup>585</sup> Jeff Collerson, Response 5 to Governance and Social Contributions Issues Paper dated 15 December 2015, p. 2.

<sup>586</sup> Tor Janes, Response 4 to Governance and Social Contributions Issues Paper dated 11 December 2015, p. 2.

emphasised that greyhound racing facilitates community-building through “tourism, provision of facilities, creation of networking and socialising opportunities and support for charitable and goodwill causes.”<sup>587</sup> To exemplify this statement, GRNSW collated stories relating to particular clubs and communities, namely:

- Coonamble – hosts the “Coonamble Greyhound Carnival”, described as “one of the biggest country racing carnivals in the state.”<sup>588</sup>
- Lithgow – hosts the annual “Golden Muzzle” final day, described as “a popular sporting event for the community” and “Lithgow’s major sporting attraction”.<sup>589</sup>
- The Gardens – hosts the annual “Walk4Brain Cancer Newcastle” event, which raised over \$20,000 in 2015 and is described as an event which brings the community together.<sup>590</sup>
- Gosford Greyhound Racing Club – hosts the annual “Pink Ribbon” event, described as an event which allows locals to raise funds for Cancer Council NSW.<sup>591</sup>
- Gunnedah Greyhound Racing Club – hosts the Winter Carnival Cup, described as an “important social night” and a substantial contributor to the local economy.<sup>592</sup>
- Wentworth Park – hosts an annual Christmas party, which provides activities for all ages including scheduled greyhound races.<sup>593</sup>
- Casino Greyhound Racing Club – participates in the town’s annual “Beef Week”, described as a large social and sporting celebration with “demonstrative social and economic benefits”.<sup>594</sup>

28.22 With the exception of Wentworth Park and The Gardens, which are located in Sydney and Newcastle respectively, the above communities are located in regions with relatively small clubs and populations.

28.23 A number of industry participants also referred to the positive contribution that greyhound racing makes to cities, towns and communities.

28.24 Tor Janes, a registered greyhound owner, stated that the industry “contributes a lot [to] society” and that there is “always something going on at the track”.<sup>595</sup> He pointed to how the track is used for varying purposes unrelated to greyhound racing, such as weddings, birthday parties, weekend markets and meeting rooms.<sup>596</sup> Mr Janes also drew attention to the “flow on” effects of having greyhound trainers in town, indicating that their presence benefits local businesses (such as feed stores) and the local rental market.<sup>597</sup>

28.25 Glenn Midson commented that:

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<sup>587</sup> GRNSW, Response 26 to Governance and Social Contributions Issues Paper dated 15 January 2016, [108].

<sup>588</sup> GRNSW, Response 26 to Governance and Social Contributions Issues Paper dated 15 January 2016, [109].

<sup>589</sup> Ibid.

<sup>590</sup> Ibid.

<sup>591</sup> Ibid.

<sup>592</sup> Ibid.

<sup>593</sup> Ibid.

<sup>594</sup> Ibid.

<sup>595</sup> Tor Janes, Response 4 to Governance and Social Contributions Issues Paper dated 11 December 2015, p. 1.

<sup>596</sup> Ibid.

<sup>597</sup> Ibid, p. 2.

[T]he NSW greyhound racing industry plays an important role in cities and towns [providing] the opportunity for [the] community to be part of its infrastructure by utilising its facilities at many venues over and above the usage for racing.<sup>598</sup>

28.26 And John Tracey provided the following view as to why greyhound racing is important to small towns:

The activity of greyhound racing in small communities where horse racing is restricted will provide a valuable avenue for social intercourse. People settling in the small town or staying in the community due to greyhound activity will lift the moral (sic) of the community ... Also the provision of the minimum standards required by the controlling body introduces skills and knowledge within the community which can have a beneficial effect on ... associated trusts and small business.<sup>599</sup>

28.27 The NSW Greyhound Breeders, Owners and Trainers' Association ("GBOTA") described the social contribution made by the industry to the cities and towns where it is located as "significant", noting that, "[a]ll greyhound venues are used for activities other than greyhound racing."<sup>600</sup>

28.28 The Commission's investigations confirm that the facilities and infrastructure associated with many greyhound racing clubs are, to varying degrees, made available for potential use by the general public. Often this will be free of charge or at a reduced, non-commercial rate.

28.29 Thus, for example, occasional weekend markets are held at particular race tracks – such as at the Shoalhaven Racing Club at Nowra.<sup>601</sup> Newcastle Greyhounds leases its in-field area and dressing sheds to Wallsend Football Clubs, and hires its restaurant to private individuals.<sup>602</sup>

28.30 In some cases, greyhound tracks are also used as the venue for the local agricultural show.

28.31 Club facilities are also utilised for family and social functions such as weddings, birthday parties and wakes.<sup>603</sup>

### **Involvement of clubs in community programs and charitable causes**

28.32 Some greyhound racing clubs – such as Newcastle Greyhounds and Gunnedah Greyhound Racing Club – are involved in assisting with community programs, including the "Work for the Dole" scheme.<sup>604</sup> Greyhound racing clubs and tracks – such as Gunnedah – have also been utilised to provide work opportunities for sentenced offenders who are subject to community service orders.<sup>605</sup>

28.33 Greyhound racing clubs also provide opportunities for volunteer work by industry participants.<sup>606</sup> This can foster a sense of self-esteem and a community ethos in volunteer workers.

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<sup>598</sup> Glenn Midson, Response 28 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 1.

<sup>599</sup> John Tracey, Response 11A to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 2.

<sup>600</sup> GBOTA, Response 25 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 6.

<sup>601</sup> Tor Janes, Response 4 to Governance and Social Contributions Issues Paper dated 11 December 2015, p. 1. See also Shoalhaven South Coast-NSW website, "Nowra Greyhound Track Markets": <<http://shoalhavenholidays.com.au/events/nowra-greyhound-track-markets/>> (accessed 16 May 2016).

<sup>602</sup> David Kiernan, Newcastle Greyhounds, Response 8 to Governance and Social Contributions Issues Paper dated 31 December 2015, p. 1.

<sup>603</sup> Tor Janes, Response 4 to Governance and Social Contributions Issues Paper dated 11 December 2015, p. 1.

<sup>604</sup> David Kiernan (Newcastle Greyhounds), Response 8 to Governance and Social Contributions Issues Paper dated 31 December 2015, p. 1.

<sup>605</sup> John Tracey, Response 11A to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 3; GBOTA, Response 25A to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 15.

<sup>606</sup> John Tracey, Response 11A to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 2.

28.34 The Commission has also identified a number of greyhound racing clubs – including Grafton Greyhound Racing Club – that have held fundraisers to help people in need, and promoted other worthwhile charitable causes.<sup>607</sup>

### Employment opportunities

28.35 As noted, the greyhound racing industry provides employment for a number of persons. This has both pecuniary and non-pecuniary benefits. In respect of the latter, employment can provide persons with self-esteem and independence. The Commission accepts that, generally speaking, employment is a pro-social factor.

### Contribution to local towns and communities

28.36 Through the combined effect of some of the above-mentioned matters, greyhound racing clubs are apt to provide a social contribution to the towns in which they are located. This is particularly so in non-metropolitan areas.

28.37 In its response to the Governance and Social Contributions Issues Paper, GBOTA contended that the NSW greyhound racing industry makes a significant social contribution to cities and towns, and that local greyhound clubs have become part of the social fabric of their communities.<sup>608</sup> GBOTA also identified greyhound racing as having a cost structure that is accessible to average, working class people. GBOTA further submitted that:

Greyhound racing becomes a way of life and life long interest for people. They enjoy the capacity to become involved, the friendships forged on common interest grounds and caring and sharing that exists in the industry. This is at the heart of the industry's capacity to generate such significant levels of voluntary input.

Participants enjoy being able to make a difference. They enjoy the interaction with the wider community and the fact that greyhound racing has a strong track record for working with communities and charities connected to it.<sup>609</sup>

28.38 To similar effect, GRNSW submits that the greyhound racing industry in NSW impacts positively on people's way of life, people's culture and people's community.<sup>610</sup> In its August 2015 submission to the Commission, GRNSW referred to, *inter alia*:

- the long history of greyhound racing in NSW;
- the industry's cultural significance (eg. through the celebration of history and industry awards);
- the industry's impact on community development (through tourism; facilities; networking and socialising; charity and goodwill);
- the industry's contribution to employment; and
- the opportunities the industry presents for education and training of participants.<sup>611</sup>

28.39 The industry's economic and social contributions were described by GRNSW as being "inextricably linked".<sup>612</sup>

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<sup>607</sup> Laurie Arnott (Grafton Greyhound Club), Response 14 to Governance and Social Contributions Issues Paper dated 14 January 2016, p. 1.

<sup>608</sup> GBOTA, Response 25 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 6.

<sup>609</sup> *Ibid.*

<sup>610</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [74].

<sup>611</sup> *Ibid.*, [97]-[105].

## The IER Report

28.40 GRNSW also placed reliance on a social impact survey undertaken by IER Pty Ltd (“IER”), a consulting firm, as part of IER’s report, “Size and Scope of the NSW Racing Industry” (2014) (“the IER Report”), prepared for the NSW Office of Liquor, Gaming & Racing. The IER Report dealt with the three racing codes, not just greyhounds. The primary purpose of the IER Report was to consider the racing industry’s economic contribution to the NSW economy, however, it also looked at employment and participation in the industry and its social and community importance.

28.41 The data that underpinned the IER Report was drawn from a number of sources, including peak bodies, racing clubs and interviews with a sample of participants.<sup>613</sup> The IER Report found that the racing industries played an important role in the development and preservation of social benefits through rural, regional and metropolitan areas of NSW.<sup>614</sup>

28.42 The IER Report found, after evaluating the community and social benefits of the racing industry, that the industry had a “significant role” in seven “critical areas”, namely:

- Community building;
- Family;
- Education and training;
- Health;
- Leisure;
- Employment; and
- Environment.<sup>615</sup>

28.43 GRNSW submitted to the Commission as follows:

The IER Study determined the social and community importance of the racing industry in NSW and, in doing so, conducted a high-level social impact evaluation of all three codes of racing ...

In summary, the IER Study found that:

- (a) thoroughbred, harness and greyhound racing in NSW plays an important role in the development and preservation of social and community benefits through rural, regional and metropolitan areas of the state;
- (b) the racing industry’s contribution has built and maintained trust and respect with local communities by enhancing both individual and community well-being, family socialisation, volunteerism, health, education, employment and environmental practices ...<sup>616</sup>

28.44 In summing up, GRNSW stated:

The IER Study examined the economic impact of the racing industry as a whole and shows that the greyhound racing industry makes a valuable social contribution to the community through participation and enjoyment of the sport, and operation of its club network. However, as the IER Study only conducted a high-level social impact evaluation, more work needs to be done in this area to truly evaluate and articulate the social benefits of the sport.<sup>617</sup>

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<sup>612</sup> Ibid, [71].

<sup>613</sup> IER Pty Ltd, report for OLGR “Size and Scope of the NSW Racing Industry” (2014) (“the IER Report”), p. 4.

<sup>614</sup> Ibid, p. 50.

<sup>615</sup> Ibid, p. 51.

<sup>616</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [77].

<sup>617</sup> Ibid, [107].

28.45 Much of GRNSW’s submission in relation to social contribution focussed on the espoused benefits that the industry brings to individuals, towns and communities across the present NSW club network, which encompasses 34 regions/communities and spans a vast geographical proportion of the State.

28.46 Relevantly, however, when discussing its strategic approach in Chapter 6 of its August 2015 submission, GRNSW highlighted the need “to reduce the club footprint and achieve a more efficient racing footprint” through achieving “club optimisation.”<sup>618</sup> GRNSW went on to state:

[N]o less than 10 to 14 clubs are required to meet the NSW regional, demographic and race meet requirements in NSW.<sup>619</sup>

28.47 In a supplementary written response to an Order issued by the Commission, regarding planned expenditure for track maintenance and improvements, GRNSW referred to club optimisation and track rationalisation as a “key initiative”.<sup>620</sup> Relevantly, GRNSW stated:

Current estimates put the cost of these initiatives at around [REDACTED] per club, with **8-14 clubs to be targeted**. These estimates are at a very preliminary stage and there is still a significant amount of analysis to be undertaken by the Joint Working Group (JWG), in order to fully delineate the strategic approach, project implementation and timeframes, and resources required.<sup>621</sup> (Emphasis added)

28.48 In so far as reliance can be placed on IER’s finding that the greyhound industry currently makes a social contribution to the State, the club optimisation and track rationalisation proposals of GRNSW, if carried out, must inevitably reduce that contribution.

28.49 Moreover, for the most part, IER did not validate the data on which it assessed the non-economic contribution of the industry. The IER report contained a disclaimer that, “[m]uch of the data provided by the industry, in particular the racing clubs, has been accepted without audit and in good faith.”<sup>622</sup>

28.50 In addition, it appears the IER Report was not required to consider potentially negative aspects of the greyhound racing industry in so far as they may impact on its contribution to the community. In this respect also, the social impact survey undertaken by IER was based on a survey undertaken by the various racing clubs.<sup>623</sup> Such a survey was inherently unlikely to draw out negative aspects of the racing industry, including the greyhound industry. The IER Report was also prepared prior to the *Four Corners* program and the live baiting scandal, and other controversies, which the Commission uncovered. Those matters may well have affected public perceptions of the greyhound racing industry and the extent to which, if at all, it makes a net positive social contribution to the community.

## Participation numbers and industry rationalisation

28.51 The extent to which the greyhound racing industry can provide a positive contribution to the community can be affected, at least in part, by the number of persons involved in the industry and by the likely industry rationalisation that GRNSW has foreshadowed.

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<sup>618</sup> Ibid, [551].

<sup>619</sup> Ibid, [553].

<sup>620</sup> GRNSW Response to Order 24 dated 19 January 2016, p. 11.

<sup>621</sup> Ibid.

<sup>622</sup> IER Report, p. 5.

<sup>623</sup> Ibid, p. 50.

## Industry participation

28.52 As to the first aspect, assuming the industry provides positive social benefits, such as increased opportunities for social interaction, a relevant consideration is *the extent* of such benefit, in terms of, for example, the numbers of participants in the industry. At least on one view, if the number of participants is relatively small, this may suggest lesser significance should be placed upon many of the perceived social benefits from the industry than might otherwise be the case. The extent of industry participation can be measured by the number of Trainers, Owners-Trainers and Attendants and also by average attendance figures at race meetings.

28.53 Dr Gregory Bryant, a former GRNSW on-track veterinarian who gave evidence before the Commission, regarded the perceived social benefits from the greyhound racing industry as being outweighed by negative factors. He also described the industry as being small in size and narrow in its focus. He told the Commission:

The greyhound racing industry gives a negligible social contribution to communities in NSW. Evidence for this is the small number of spectators attending race meetings. Apart from race participants and their connections there is virtually no crowd at most race meetings. Most of the employment at tracks is on a casual basis and is only once, or at most twice, per week, for a period of 5-6 hours. Not many people in total are employed at a race meeting.

...

Figures showing employment generated by the greyhound racing industry are highly contentious and overly inflated. The fact is that few people have full time employment in the industry. Those industry participants who do rely on their incomes from greyhound racing do get a social contribution to their lives.

...

Greyhound racing contributes little to community development. Many in the community now believe that it should be banned. It is a very narrow and specialized industry that doesn't really provide much to the surrounding communities and offers few networking opportunities. Socializing opportunities do exist but you tend to see more or less the same people as you go from track to track. Due to the competitive nature of the sport there are a lot of personal rivalries and there is a fair amount of jealousy and animosity between trainers.<sup>624</sup>

### *The number of industry participants*

28.54 The number of participants in the greyhound racing industry is, in aggregate terms, relatively modest. The number of participants is also declining.

28.55 The NSW Legislative Council's 2014 Select Committee on Greyhound Racing in NSW ("the Select Committee") stated in its First Report dated 28 March 2014 ("the Select Committee First Report"):

In 2011-12 there were 4,841 industry participants (Trainers, Owner/Trainers, and Attendants) in NSW. This was a decline of over one thousand people from a peak of 5,959 participants in 2008-09.<sup>625</sup>

28.56 In arriving at these figures, the Select Committee relied on data from the GRNSW Annual Report 2013.<sup>626</sup>

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<sup>624</sup> Dr Gregory Bryant, Response 9 to Governance and Social Contributions Issues Paper dated 9 January 2016, pp. 4-5.

<sup>625</sup> Select Committee, report "Greyhound Racing in New South Wales – First Report" (March 2014) ("the Select Committee First Report"), [2.5].

<sup>626</sup> GRNSW Annual Report 2013, p. 33.

28.57 Since the Select Committee First Report, the number of industry participants in NSW has continued to decline. The most recent GRNSW Annual Report, for FY15, records the total number of licensed industry participants as 4,414.<sup>627</sup>

28.58 The applicable figures for the last six years are summarised in Table 28.1.

**Table 28.1 Number of participants in NSW greyhound racing industry: FY08–FY15**

	Trainers	Owner/Trainers	Attendants	Total
FY 2008	1,607	2,653	1,400	5,660
FY 2009	1,753	2,704	1,502	5,959
FY 2010	1,553	2,329	1,233	5,115
FY 2011	1,595	2,330	1,342	5,267
FY 2012	1,589	2,082	1,170	4,841
FY 2013	1,432	1,755	942	4,129
FY 2014	1,419	1,744	1,004	4,167
FY 2015	1,470	1,846	1,098	4,414
Percentage reduction from FY08 to FY15	9%	30%	22%	22%

Source: GRNSW Annual Report 2012, p. 32; GRNSW Annual Report 2015, p. 25

28.59 Table 28.1 reveals that, in aggregate terms, relatively few people participate – as licensed Trainers, Owner-Trainers and Attendants – in the greyhound racing industry in NSW. In the FY15, there were 4,414 such participants.

28.60 The population of NSW, as at September 2014, was 7.644 million people.<sup>628</sup> On this figure, the percentage of the population involved as licensed greyhound racing participants equates to some 0.058%.

28.61 Further, the numbers of licensed industry participants have been in decline. Thus, by reference to the Table 28.1, in comparing the figures from FY08 and FY15, there has been a 22% decline in the number of licensed industry participants in NSW.

### **Attendances at race meetings**

28.62 On average, only a relatively small number of persons now attend greyhound race meetings in NSW. As late as the 1970s, crowds of up to 10,000 people at metropolitan meetings were common. Today, apart from a few, well-advertised, big prize money meetings, attendees are counted in the hundreds. Mr Brent Hogan, former Chief Executive of GRNSW, gave evidence to the Commission that:

... particularly outside of metropolitan racing, that those in attendance were either participants with a dog engaged in a race or friends or family of a participant. It wasn't a spectator sport that attracted a broader audience in a general sense ... by an large if you were to walk onto a racetrack in the state today, you won't find many people other than those with a direct connection to the racing itself.<sup>629</sup>

28.63 As noted in Chapter 3, the introduction of TAB and online betting, and the televising of races, has been the principal – probably the sole – cause of the decline in attendances. Punters can sit at home or in hotels and clubs and place bets and watch greyhound races in comfort. No longer do punters searching for the best odds for their proposed bets have to attend a meeting to bet

<sup>627</sup> GRNSW Annual Report 2015, p. 25.

<sup>628</sup> Australian Bureau of Statistics website, "Australian Demographic Statistics Sept 2015":

<<http://www.abs.gov.au/ausstats/abs@.nsf/lookup/3101.0Media%20Release1Sep%202015>> (accessed 16 May 2016).

<sup>629</sup> 17 February 2016: T765.14-20.

with a bookmaker. A large number of online bookmakers as well as the TAB cater for their betting needs by offering a variety of exotic bets as well as the traditional straight-out bet. Moreover, much greyhound racing takes place at night. It is hardly surprising that punters now prefer the comfort of their homes, hotels and clubs to braving the elements at night meetings, particularly in winter.

28.64 The 2015 report of the Working Dog Alliance Australia, “Review & Assessment of Best Practice Rearing, Socialisation, Education & Training Methods for Greyhounds in a Training Context” (“the WDA Report”), commissioned by GRNSW, states that greyhound racing has declined in recent decades and that, historically, attendance fell sharply once off-course betting was legalised.<sup>630</sup>

28.65 The Select Committee First Report stated:

On average, 500 people attend a metropolitan greyhound race meeting, while 114 people attend a TAB meeting and 107 attend a Non-TAB race meeting. These attendance figures have remained relatively stable for the last five years.<sup>631</sup>

28.66 The figures that the Select Committee referred to are of paying attendees at race meetings and were sourced from the GRNSW Annual Report 2013.

28.67 GRNSW’s Annual Report 2014 indicates that the average attendance figure has declined since the GRNSW Annual Report 2013 was published. On average, 395 people attended a metropolitan greyhound race meeting, while 101 people attended a TAB race meeting and 83 attended a non-TAB race meeting.<sup>632</sup>

28.68 In contrast to previous years, GRNSW’s most recent Annual Report, for FY15, does not include average attendance figures. They can, however, be ascertained by comparing total attendance figures with the total number of race meetings.<sup>633</sup> The calculations reveal a continued decline in attendances at race meetings. On average, 352 people attended a metropolitan greyhound race meeting, while 79 people attended a TAB race meeting and 78 attended a non-TAB race meeting.

28.69 The applicable figures for the last six years are summarised in the table 28.2.

**Table 28.2 Average attendance figures at greyhound race meetings in NSW: FY10-FY15**

	Metropolitan	TAB	Non-TAB
FY 2010	494	109	101
FY 2011	450	113	90
FY 2012	458	114	93
FY 2013	500	114	107
FY 2014	395	101	83
FY 2015	352	79	78
Percentage reduction from FY10 to FY15	28.7%	27.5%	22.7%

Source: GRNSW Annual Report 2004, p. 27; and GRNSW Annual Report 2015, p. 33.

28.70 The figures confirm that, on average, relatively few people attend greyhound race meetings in NSW. Further, the numbers have declined in the last six years. Thus, in comparing the figures from FY10 and FY15, there has been a 28.7% decline in average attendances at metropolitan

<sup>630</sup> Exhibit S (17-19 November 2015), p. 19.

<sup>631</sup> Select Committee First Report, [2.7] (citing GNRNSW Annual Report 2013, p. 31).

<sup>632</sup> GRNSW Annual Report 2014, p. 27.

<sup>633</sup> GRNSW Annual Report 2015, p. 33.

tracks, a 27.5% decline in attendances at TAB tracks and a 22.7% decline in attendances at non-TAB tracks.

- 28.71 In pursuit of rationalising the industry, GRNSW proposes to abolish non-TAB meetings. This will ensure that the decline in attendances continues. In FY15, the average attendance at greyhound meetings was 509 persons of which 78 attended non-TAB meetings. Based on FY15 figures, this alone will result in a 15% decline in attendances.

## Foreshadowed industry rationalisation

- 28.72 GRNSW has foreshadowed that there will be rationalisation of the greyhound racing industry in NSW.

- 28.73 As noted above, in its written submission to the Commission dated 24 August 2015, GRNSW flagged the issue of industry rationalisation. GRNSW stated that current funding constraints would not allow GRNSW to continue funding the existing number of clubs.<sup>634</sup> GRNSW further said that: “Irrespective of GRNSW’s ability to secure significant additional funding, the number of clubs in NSW must be optimised to reduce the club footprint and achieve a more efficient racing footprint.”<sup>635</sup>

- 28.74 In a February 2016 media interview, Mr Paul Newson, Interim Chief Executive of GRNSW, is recorded as stating that the current network of 34 greyhound racing clubs in NSW cannot be sustained in the future. The intended closure of at least 20 to 24 greyhound tracks as part of the rationalisation of the industry must inevitably hasten the decline in attendances. On the topic of club rationalisation and “Centres of Excellence”, Mr Newson was quoted as stating:

There is no way the industry can support 34 clubs under the current arrangements ...

The Joint Working Group has been working on how do we move to a centre of excellence. What does a centre of excellence actually mean? The characteristics haven't been precisely defined, but there's broad agreement the industry needs to move to a centre of excellence model.

What it means for clubs is there will be rationalisation – there must be rationalisation – and we haven't been waiting for the commission to find and make recommendations.

I think the future model of the industry would be at least half of what it is now. How that is mapped out on the geography of NSW we're not sure. The industry debt in maintaining infrastructure standards is not sustainable.<sup>636</sup>

- 28.75 GRNSW has foreshadowed a potential industry model whereby certain main race tracks become “Centres of Excellence” at which, in a rationalised industry, race meetings are held. Other tracks may operate only as trial tracks or may cease to operate.

- 28.76 GRNSW has published a final report dated 29 January 2016 received from the Joint Working Group (“JWG”), which it established, “Implementing reform in the New South Wales greyhound racing industry” (“the JWG Report”). The JWG Report states that:

Significant change is required to the current network of 34 tracks if the industry is to be sustainable into the future. To this end a shift is required from the current network to a smaller number of tracks of which most will need to become Centres of Excellence.<sup>637</sup>

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<sup>634</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [548].

<sup>635</sup> *Ibid*, [551].

<sup>636</sup> Article “Greyhound Racing NSW withdraws inquiries into suspected live baiters over prosecution fears” by Adam Pengilly, 13 February 2016, *The Sydney Morning Herald*: <<http://www.smh.com.au/sport/horseracing/greyhound-racing-nsw-withdraws-inquiries-into-suspected-live-baiters-over-prosecution-fears-20160209-gmpwh8.html>> (accessed 16 May 2016).

<sup>637</sup> JWG Report, p. 6.

- 28.77 GRNSW has not yet publicly indicated which race tracks will become Centres of Excellence and what will be the full extent of the industry rationalisation that it proposes.
- 28.78 What is clear, however, is that, if the greyhound racing industry in NSW continues to exist, it will be subject to significant rationalisation. This is likely to result in the effective closure of a number of race tracks. To the extent that the greyhound racing industry provides a social contribution to NSW – for example, by providing opportunities for social interaction – the foreshadowed industry rationalisation, including the effective closure of some race tracks and/or the designation of some tracks as mere trial tracks must inevitably lead to a reduction in the extent of any such benefit.

## Negative social impacts of the greyhound racing industry

- 28.79 As noted, any positive social contribution provided by the greyhound racing industry needs to be considered in context. A number of strong countervailing considerations are also identified. The Commission received 498 submissions dealing with the social impact of greyhound racing. Of these, 472 submissions referred to the industry’s social impact in a *negative* manner. This means that well over 90 per cent of submissions to the Commission which addressed social contribution pointed to the negative impact that the industry has on individuals, communities and society.
- 28.80 While accepting that the industry may make some social contribution, RSPCA Australia noted that greyhound racing is associated with “significant social costs”, including:
- the strain that euthanasing unwanted greyhounds places on the community (for example, private veterinary clinics; council pounds; and animal shelters); and
  - the mental health consequences – including “Perpetration-Induced Traumatic Stress” and “moral stress” – suffered by staff in veterinary clinics, pounds and animal shelters (for example), who repeatedly euthanase “healthy, unwanted animals”.<sup>638</sup>
- 28.81 Dr Bryant surmised that, “if greyhound racing was banned communities in NSW would suffer little impact.”<sup>639</sup>
- 28.82 Animals Australia went so far as to say that, since the *Four Corners* program, it is probable that people living near training and breeding facilities who do not partake in greyhound racing “may also feel degraded by their presence due to the abhorrent nature of the activities exposed.”<sup>640</sup>
- 28.83 Dr Eleonora Gullone of the Animal Justice Party wrote about the “empirically demonstrated” link between deliberate animal cruelty and antisocial behaviour;<sup>641</sup> and greyhound adoption group, Friends of the Hound Inc., spoke of the growing opposition to greyhound racing and the “inevitability” of greyhound racing’s demise in the context of an evolving society.<sup>642</sup>
- 28.84 Animal Liberation ACT, focussing on the negative impacts that problem gambling can have on communities, noted the following:

... the problems that affect the users of other industries where gambling is central to their existence are the same problems that affect the users of the greyhound racing industry ... These problems affect those closest to the gambler and to the community in which he or she lives ... One

<sup>638</sup> Dr Jade Norris (RSPCA Australia), Response 24 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 5.

<sup>639</sup> Dr Greg Bryant, Response 9 to Governance and Social Contributions Issues Paper dated 9 January 2016, p. 4.

<sup>640</sup> Animals Australia, Response 19 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 3.

<sup>641</sup> Dr Eleonora Gullone (Animal Justice Party), Response 23 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 1.

<sup>642</sup> Lisa White (Friends of the Hound Inc.), Response 21 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 2.

can see that, although there may be some social benefits, these are over-shadowed by the complexity and severity of the social problems caused [by] an industry of which gambling is an inherent part.<sup>643</sup>

- 28.85 The Animal Defender's Office also highlighted the detrimental effect that problem gambling can have on cities, towns and communities, noting that gambling "can be seen to be an unsatisfactory means of cementing the social bond."<sup>644</sup>

### Animal welfare concerns

- 28.86 Chief among the negative impacts of greyhound racing is the industry's handling of animal welfare issues. The Commission received many submissions whose effect was that the industry cannot be trusted to treat animal welfare issues as a priority. Animal welfare issues are dealt with in detail elsewhere in this Report, including Chapters 8 to 10. They include inadequate kennelling and exercise yards, inadequate socialisation of young greyhounds, which can render them unsuitable for later rehoming and the deliberate killing of healthy greyhounds in unacceptably high numbers simply because they are regarded as unable to win races.
- 28.87 The negative implications of euthanasing large numbers of healthy, unwanted greyhounds extend beyond the direct harm caused to the animals. The large-scale 'wastage' of healthy greyhounds causes profound community unease. In evidence given to the Commission, Mr Newson thought that this wastage, rather than live-baiting, was the greatest problem facing the industry in terms of its public acceptance. He was right to think so. Research also indicates that veterinary and animal shelter staff involved in euthanasing healthy, unwanted animals may be at increased risk of adverse mental health consequences and suicide.<sup>645</sup>

### Profound community disquiet

- 28.88 Second, the greyhound racing industry in NSW has, in recent times, been associated with controversies that have caused profound community disquiet. This includes the disturbing revelations, both in the *Four Corners* program and in evidence before the Commission, about the extent to which participants engaged in the barbaric practice of live baiting and also about associated industry failures to address the practice. Other controversies are also associated with the industry, including animal cruelty connected with the live export of greyhounds from NSW and, as revealed by the Commission, unacceptable conduct by GRNSW and the industry, involving deception of the public in connection with the extent of greyhound euthanasia and of the injuries suffered by greyhounds on race tracks.
- 28.89 The Commission is of the view that such matters have caused grave public unease about the greyhound racing industry. This is apt to lessen the net effect of any perceived social contribution arising by the greyhound industry's engagement with local towns and communities.
- 28.90 Such a view is reflected also in submissions that the Commission received. One person described the industry as "divisive to a community".<sup>646</sup> In its response to Governance and Social Contributions Issues Paper, Animals Australia submitted that it is highly likely that, since the revelations of live baiting and the live export of greyhounds, "the presence of greyhound properties in and near towns and communities creates a sense of unease, even shame, for

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<sup>643</sup> Animal Liberation ACT, Response 30 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 4.

<sup>644</sup> Tara Ward (Animal Defender's Office), Response 31 to Governance and Social Contributions Issues Paper dated 16 January 2016, p. 5.

<sup>645</sup> D Bartram and David Baldwin, "Veterinary surgeons and suicide: A structured review of possible influences on increased risk", (2010) 166(3) *Veterinary Record* 388; B Schneider, "Euthanasia and the veterinarian" (1996) 37 *Canadian Veterinary Journal* 217; Terry Whiting and Colleen Marion, "Perpetration-induced traumatic stress – A risk for veterinarians involved in the destruction of healthy animals" (2011) 52(7) *Canadian Veterinary Journal* 794.

<sup>646</sup> Sarah O'Brien, Response 22 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 4.

others in those communities”.<sup>647</sup> To similar effect, in its response to Governance and Social Contributions Issues Paper, the Animal Defenders Office contended that the greyhound racing industry creates social discord in the community in respect of the industry’s treatment of greyhounds and other animals.<sup>648</sup>

28.91 The Commission was also referred to public opinion polls and newspaper editorials, which were said to attest to widespread community condemnation of the greyhound racing industry. Thus, for example, *The Sydney Morning Herald*<sup>649</sup> and *The Sun-Herald*<sup>650</sup> newspapers each featured editorials in 2015 calling for a ban on greyhound racing. *The Sydney Morning Herald* editorial, after referring to matters including the practice of live baiting and the euthanasing of healthy greyhounds, stated:

The arguments for banning greyhound racing are now compelling. The damage to those who eke a living from the industry would pale in comparison to the benefits from reducing cruelty to the dogs and animals used in blooding them.<sup>651</sup>

28.92 *The Sun-Herald* editorial, dated 10 October 2015, referred to the euthanasing of healthy greyhounds and described the greyhound racing industry as “littered with ethical problems” that it has failed to address. The editorial further described the greyhound racing industry as “an appalling anachronism whose time has run out.”<sup>652</sup>

28.93 Online opinion polls published in 2015 by the *Central Western Daily* newspaper,<sup>653</sup> and the *Illawarra Mercury* newspaper,<sup>654</sup> each reported that over 72% of respondents voted yes to the question: “Should greyhound racing be banned in Australia?” Clearly, such opinion polls – which do not purport to be survey evidence of the type that might be admissible in court proceedings – have limited utility and are doubtless open to criticism based upon the small sample size and other factors.

28.94 The Commission is, however, firmly of the view that – putting to one side the opinion polls referred to – there are very serious concerns held by the community in respect of objectionable features of the greyhound racing industry (such as the practice of live baiting and the large-scale euthanasing of healthy greyhounds) which should properly be taken into account when considering the overall extent to which the greyhound racing industry makes a positive contribution to the community.

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<sup>647</sup> Animals Australia, Response 19 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 3.

<sup>648</sup> Tara Ward (Animal Defender’s Office), Response 31 to Governance and Social Contributions Issues Paper dated 16 January 2016, p. 5.

<sup>649</sup> Article “Ban greyhound racing: the arguments are compelling”: (editorial) 17 February 2015, *The Sydney Morning Herald*: <<http://www.smh.com.au/comment/smh-editorial/ban-greyhound-racing-the-arguments-are-compelling-20150216-13gnje.html>> (accessed 17 May 2016).

<sup>650</sup> Article “Time runs out for greyhound racing cruelty”: (editorial) 10 October 2015, *The Sun Herald*: <<http://www.smh.com.au/comment/smh-editorial/time-runs-out-for-greyhound-racing-cruelty-20151008-gk4wr0.html>> (accessed 17 May 2016).

<sup>651</sup> Article “Ban greyhound racing: the arguments are compelling”: (editorial) 17 February 2015, *The Sydney Morning Herald*: <<http://www.smh.com.au/comment/smh-editorial/ban-greyhound-racing-the-arguments-are-compelling-20150216-13gnje.html>> (accessed 17 May 2016).

<sup>652</sup> Article “Time runs out for greyhound racing cruelty”: (editorial) 10 October 2015, *The Sun Herald*: <<http://www.smh.com.au/comment/smh-editorial/time-runs-out-for-greyhound-racing-cruelty-20151008-gk4wr0.html>> (accessed 17 May 2016).

<sup>653</sup> Article “Opinion Poll: Greyhound racing and live baiting: time to ban the ‘sport of grubs” by Sam De Brito, 19 February 2015, *Central Western Daily*: <<http://www.centralwesterndaily.com.au/story/2893371/opinion-poll-greyhound-racing-and-live-baiting-time-to-ban-the-sport-of-grubs/>> (accessed 16 May 2016) (results: Yes – 72.21%; No – 27.01%; I don’t know – 0.79%; total votes: 6,358).

<sup>654</sup> See opinion poll published with online version of article: article “Bulli track boss slams push to shut down greyhound racing industry” by Angela Thompson, 11 May 2015, *Illawarra Mercury*: <<http://www.illawarramercury.com.au/story/3071679/shut-down-greyhound-racing-industry-greens/>> (accessed 16 May 2016) (results: Yes – 73.7%; No – 26.3%).

## Other potential negative consequences

- 28.95 Third, the greyhound racing industry is intrinsically linked with gambling. A number of persons made submissions to the Commission about the deleterious impact of gambling that is said to be associated with the greyhound racing industry in NSW.<sup>655</sup>
- 28.96 GRNSW states that the greyhound racing industry comprises about 22% of betting turnover in NSW.<sup>656</sup> It is beyond argument that the revenue obtained from gambling benefits the State. The money raised can be spent on important social issues such as roads, hospitals, education and housing. But advantageous as this gambling revenue may be to the State, it has a dark side so far as many individuals are concerned. Habitual or ‘problem gambling’ can have significant, deleterious effects, including effects on the families of persons afflicted.
- 28.97 In 2010, the Productivity Commission provided a report on gambling, including the social impacts of the gambling industries and the incidence of gambling abuse.<sup>657</sup> The Productivity Commission estimated that there were 115,000 problem gamblers in Australia, with another 280,000 at moderate risk. The Productivity Commission further estimated that the social cost of problem gambling to be at least \$4.7 billion a year.<sup>658</sup>
- 28.98 The Productivity Commission identified particular harms associated with problem gambling:
- The harms from problem gambling include suicide, depression, relationship breakdown, lowered work productivity, job loss, bankruptcy and crime. For example, a 2008 survey found that gambling was the most common motivation for fraud and that the average loss was \$1.1 million per incident. Moreover, the rough counts of people directly affected ignores the ‘ripple effects’ of problem gambling.
- For each problem gambler, several others are affected — including family members, friends, employers and colleagues. A recent Tasmanian survey found that 50 per cent of people said they personally knew someone who was experiencing serious problems with gambling and around 13 per cent of people identified at least one family member with a serious problem.
- While it is hard to quantify some aspects of these harms, such as suicide, the evidence suggests costs equivalent to many thousands of dollars per person affected. When these costs are accumulated across people with significant problems, they amount to some \$4.7 billion annually using conservative estimates. The major contributor to harm is the large financial losses experienced by problem gamblers.<sup>659</sup>
- 28.99 Problem gambling is not unique to wagering on greyhound racing. It is also associated with other forms of gambling, including wagering on horseracing, trotting, sports betting and poker machines.

## Concluding remarks

- 28.100 The Commission accepts that aspects of the greyhound racing industry make a positive social contribution which benefits a number of individuals and areas in NSW. Greyhound racing provides a means for social interaction. Many participants are hobby trainers and obtain enjoyment from meeting and mixing with other people at race tracks.

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<sup>655</sup> Sarah O’Brien, Response 22 to Governance and Social Contributions Issues Paper dated 15 January 2016; Dr Eleonora Gullone (Animal Justice Party), Response 23 to Governance and Social Contributions Issues Paper dated 15 January 2016; Animal Liberation ACT, Response 30 to Governance and Social Contributions Issues Paper dated 15 January 2016; Tara Ward (Animal Defender’s Office), Response 31 to Governance and Social Contributions Issues Paper dated 16 January 2016.

<sup>656</sup> GRNSW Statement on Tax Harmonisation dated 3 February 2016.

<sup>657</sup> Productivity Commission, “Gambling”, Inquiry Report No. 50, 26 February 2010 (“Productivity Commission Report”).

<sup>658</sup> *Ibid.*, p. 2.

<sup>659</sup> *Ibid.*, p. 16.

- 28.101 Greyhound racing – or at least greyhound ownership – also provides health benefits for some people, by providing a reason for them to exercise. It can help keep people active. This can have indirect benefits for the broader community by reducing health costs.
- 28.102 As noted, there are also potential benefits to the community arising from the use of club facilities for community events and social functions. Some clubs are also involved in community programs – such as the ‘Work for the Dole’ scheme – and assisting charitable causes.
- 28.103 The Commission accepts that these positive social contributions should be acknowledged. They are also important for the people concerned. There are a number of hobby greyhound trainers, who no doubt care for their dogs and who obtain significant enjoyment from their involvement in the industry.
- 28.104 Nonetheless, these positive social contributions need to be considered in context and, further, are impacted by negative considerations to which reference has been made above.
- 28.105 As to context, the greyhound racing industry is, in terms of number of participants, relatively small. Further, participation numbers have been in decline. They fell some 22% from FY08 to FY15. In FY15, there were a mere 4,414 participants in the form of licensed Trainers, Owner-Trainers and Handlers. This equated to 0.058% of the population in NSW. Even taking into account the social contribution resulting from the employment of persons who are not licensed to participate in greyhound racing, such as track staff, GRNSW staff, veterinarians, ‘muscle men’ and suppliers of goods and services, the positive social impact of greyhound racing is not large.
- 28.106 In addition, average attendances at race meetings are relatively small and have declined, by over 23%, from FY10 to FY15. In FY15, on average, only 352 persons attended race meetings at metropolitan tracks. For non-TAB tracks, on average only 78 persons attended each meeting in FY15.
- 28.107 GRNSW has foreshadowed rationalisation of the industry, by way of reducing the number of clubs to hold race meetings. Instead of the current network of 34 clubs holding race meetings, there may in future be between ten to 14 clubs, or even less, holding such meetings, with other clubs to be relegated to mere trial tracks or perhaps even closed completely. Assuming the industry is otherwise permitted to continue, this rationalisation is apt to impact upon the extent of any positive contribution provided by the industry to both participants and local communities.
- 28.108 Counter-balancing the perceived social benefits that the industry provides are negative considerations. These negative considerations are significant. As the Commission’s investigations have revealed, substantial animal welfare concerns have arisen in connection with the greyhound racing industry in NSW, including the treatment of greyhounds and the large-scale euthanasing of healthy dogs. The Commission’s investigations have further revealed a failure by the industry adequately to address the barbaric practice of live baiting and, further, unacceptable conduct that GRNSW engaged in, involving deception of the public as to the extent of euthanasing greyhounds and of injuries suffered by greyhounds on race tracks.
- 28.109 Further, history is replete with instances of entertainment sports that have been prohibited because of the perceived cruelty involved, notwithstanding they were once considered traditional pastimes that provided enjoyment and social benefits to participants. For example, live hare coursing has been banned in this State since the 1950s although it was once a relatively popular sport. The United Kingdom Parliament banned fox hunting in 2005,<sup>660</sup> notwithstanding that it was said to be deeply entwined with Britain’s rural way of life. In Spain, Catalonia has prohibited bullfighting notwithstanding its long history in that country and the

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<sup>660</sup> *Hunting Act 2004* (UK). This Act came into force on 18 February 2005.

admiration that famous literary figures such as Ernest Hemingway have had for bullfighting. To similar effect, animal circuses are now prohibited in some jurisdictions.<sup>661</sup>

- 28.110 The Commission has no doubt that the cumulative effect of the matters referred to above has caused substantial public disquiet concerning the greyhound racing industry in NSW. There is a strong degree of justified community mistrust concerning the industry. This serves considerably to lessen – and indeed overrides – any perceived social contribution arising from the industry’s engagement with participants and local towns and communities. The industry has failed to satisfy this Commission that overall it has made a positive social contribution to the lives of the residents of NSW. This finding is an important consideration in determining whether greyhound racing should be allowed to continue in this State.
- 28.111 Whether the industry might make a positive social contribution in the future, if allowed to continue, is a more difficult issue to determine. GRNSW has now acknowledged many of its failings and put in place many new policies designed to overcome its past failures. Since February 2015, its management structure has changed significantly. However, many of its plans and policies for the future are aspirational. There is no guarantee that they will succeed or even be accepted as necessary by the majority of industry participants. Mr Newson’s experience with a vocal minority of trainers concerning live baiting, the reluctance of participants to accept the breeding reforms and the attitude of management to reporting deaths and injuries to dogs, even after the *Four Corners* program, does nothing to inspire confidence that the industry has reformed. The most that can be said is that GRNSW, under its new management, is taking steps to overcome past failings of the industry.
- 28.112 Whatever steps GRNSW succeeds in taking, ‘the elephant in the room’ will be the continuing slaughter of thousands of greyhounds for no other reason than they never had or no longer have any commercial usefulness. Unless it can be overcome, it will be difficult – probably impossible – for greyhound racing to acquire a positive social impact image.

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<sup>661</sup> See, for example, *Animal Welfare Act 1992* (ACT) s. 51, s. 52.

## 29 Future governance: models and issues

### Introduction

29.1 Regulation of the greyhound racing industry involves overseeing and preserving its integrity. This necessarily includes ensuring proper standards of welfare for greyhounds which have been purpose bred to race. The relevant standards are not those that might be acceptable to participants in the industry. The relevant standards are those which are acceptable to the wider community in 2016. A key issue considered by the Commission in other Chapters of this Report is whether there is any realistic prospect that those standards *can* be met. That is, whether the welfare issues identified by the Commission can be addressed to a level which is consistent with community expectations. The subject matter of this Chapter is the industry's current governance model.

29.2 The current governance model vests commercial and regulatory functions in Greyhound Racing NSW ("GRNSW"). It has failed in a number of respects. Important examples are the failure of GRNSW to properly oversee animal welfare, to take any steps to stamp out live baiting (although put on notice of its continued existence in 2010), to develop and maintain appropriate welfare standards in the industry, and to discipline industry participants who do not maintain them.

29.3 Although GRNSW advocated for the continuation of the current governance model, it acknowledged that it had failed to meet community expectations in relation to animal welfare and that its operations were weighted in favour of commercial considerations. In its submission to the Commission, GRNSW stated:

Serious animal welfare challenges confront the greyhound racing industry in NSW. The industry is increasingly subject to ongoing scrutiny from the community whose expectations around animal welfare including racing animals have changed and will evolve. While GRNSW has made attempts to improve the welfare of greyhounds, it accepts that it has been deficient in aligning with community expectations in this area and has not afforded sufficient resources or priority to welfare outcomes. Further, strategic planning for the industry has historically been weighted towards commercial considerations with animal welfare largely being regarded as a hygiene factor.<sup>662</sup>

29.4 GRNSW also acknowledged that:

- Self-regulation under the current "arrangement" had failed and that this was a consequence of a lack of robust governance, strategic and operational leadership, and regulatory capability.<sup>663</sup> The failure was also due to "inadequate accountability mechanisms".<sup>664</sup>
- It had failed to adequately monitor and engage with participants and that:

[I]ts inaction and ineffective oversight arrangements facilitated an environment where welfare considerations received limited priority and serious misconduct went unmonitored.<sup>665</sup>

- Until recently, the regulatory capability of GRNSW was "non-existent". Worse, there was a "pretence" that it was effective.<sup>666</sup>

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<sup>662</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [436].

<sup>663</sup> Ibid, [128].

<sup>664</sup> Ibid, [111].

<sup>665</sup> Ibid, [282].

- 29.5 GRNSW's primary focus on commercial considerations at the expense of animal welfare underscores the problem identified in many submissions made to the Commission. GRNSW has an irreconcilable conflict of interest. This will inevitably continue unless or until there is a restructuring (or closure) of the industry. Greyhound racing is conducted for commercial gain. Those who breed, rear, train and race greyhounds generally do so in the expectation that they will make money. Promotion of the commercial aspects of the industry on the one hand and managing the integrity of the industry on the other necessarily creates a substantial risk that the industry's integrity, including acceptable standards of animal welfare, will be sacrificed in favour of the industry's commercial interests.
- 29.6 What occurred between 2009 and 2015 demonstrates that the risk is not merely theoretical. The industry's integrity was, in fact, compromised. GRNSW promoted the commercial interests of greyhound racing at the expense of its obligation to protect the welfare of greyhounds purpose bred for the sport. The current model facilitated this unacceptable outcome. A number of examples emerged in the evidence. They included:
- Tolerance of the 'traditional' training method of live baiting. On some occasions where small live animals, such as rabbits, were discovered on properties occupied by greyhounds, reports were made to RSPCA NSW or the participants were told to remove them. On other occasions, neither step was taken. Little, if anything, was done to stamp out the practice of live baiting and little was done to stop the illegal keeping of small animals on greyhound properties. The practice of live baiting was known to GRNSW senior management,<sup>667</sup> who in turn brought it to the attention of the GRNSW Board.<sup>668</sup> It was only after the *Four Corners* program that GRNSW outlawed the keeping of small animals,<sup>669</sup> and prohibited the use of anything other than artificial lures.<sup>670</sup>
  - The deliberate concealment in stewards' reports of instances where a greyhound was euthanased on-track and the misleading description of injuries so as to understate their seriousness.<sup>671</sup> The evidence demonstrated that this practice continued until it was exposed by the Commission in public hearings in November 2015. It is a matter of grave concern that, even after the Legislative Council's 2014 Select Committee on Greyhound Racing in NSW ("the Select Committee"), the exposure of live baiting on the *Four Corners* program, and the exposure of other serious welfare failings by the Commission, the industry regulator could permit such conduct to occur, and continue to occur, and that its stewards, including the Chief Steward, were complicit in this conduct. Ironically, the stewards were re-named 'Integrity Officers' in around 2010, not long after GRNSW assumed responsibility for the regulatory functions of the industry. There cannot be any doubt that the practice of misrepresenting injuries and fatal outcomes was intended to conceal relevant information relating to greyhound welfare from public scrutiny. It throws into question GRNSW's claims that the industry will be transparent moving forward.
  - The failure to promote anything other than minimum standards for the health and wellbeing of greyhounds in the GRNSW Codes of Practice, which were cobbled together

<sup>666</sup> Paul Newson, 2 October 2015: T400.45.

<sup>667</sup> Ex D (28 September – 2 October 2015); Ex E (28 September – 2 October 2015).

<sup>668</sup> Ex F (28 September – 2 October 2015); Ex T (28 September – 2 October 2015); Ex U (28 September – 2 October 2015); Ex V (28 September – 2 October 2015).

<sup>669</sup> The Rules R 86B(1)(b) was introduced on 20 April 2015.

<sup>670</sup> An announcement was made by GRNSW on 2 November 2015 with the new policy to commence on 1 December 2015: Article "GRNSW Announces Changes to Lure Policy" by GRNSW, 2 November 2015, *GRNSW website*: <<https://www.thedogs.com.au/NewsArticle.aspx?NewsId=7020>> (accessed 11 June 2016).

<sup>671</sup> GRNSW has now introduced a system of reporting where injuries and fatalities will be recorded in stewards' reports. GRNSW has also published two reports of injuries and fatalities occurring since 15 November 2015: see GRNSW, "GRNSW Preliminary Greyhound Racing Injury Report – 15 November 2015 to 1 February 2016"; and "GRNSW Quarterly Greyhound Racing Injury Report – 1 January 2016 to 31 March 2016".

from various existing, and sometimes out-dated, enforceable statutory codes of practice without any input from independent animal welfare experts.<sup>672</sup> The Commission is satisfied that to a significant extent the GRNSW Codes of Practice were, and remain, little more than window dressing designed to appease those members of the public who have an interest in the welfare of the industry's greyhounds. As was noted by the Chief Inspector of RSPCA NSW, GRNSW essentially copied and pasted sections of codes of practice that apply to dogs as a uniform species. It missed an important opportunity to enhance and strengthen the minimum standards for greyhounds in the racing industry which face unique welfare issues. He also noted that there were inconsistencies between GRNSW's Codes of Practice and the enforceable statutory codes of practice.<sup>673</sup> That is significant because a breach of the enforceable statutory codes of practice can be a criminal offence.

- The failure to promote responsible breeding practices and control the euthanasia of healthy greyhounds.
- The failure to keep transparent information to enable lifecycle tracking.
- The failure to regulate rearing and breaking-in establishments. These are the places where live baiting was exposed in the *Four Corners* report. They had been recognised as high risk for years.
- The tolerance of treatments and therapies being administered to greyhounds which had no scientific credibility, instead of insisting on proper veterinary care. These treatments were considerably cheaper than veterinary services but a number of them were inherently cruel.

## Overview of GRNSW's governance proposals

29.7 GRNSW acknowledged that the appropriate governance model is in need of "drastic reform".<sup>674</sup> Notwithstanding, it advanced submissions in favour of maintaining the status quo,<sup>675</sup> or a modified version of the status quo. Its submissions were unconvincing.

### Option 1 – The status quo with "significant enhancements"

29.8 The first option put forward by GRNSW, described as "Option 1", was that the current structure continue but with "significant enhancements".<sup>676</sup> GRNSW claimed that the suggested enhancements would have the following effect:

... significantly enhanced governance arrangements including leadership around regulatory matters, greater accountability for delivering agreed outcomes and an enhanced organisational operating model, would result in an effective discharge of both its commercial and regulatory functions.<sup>677</sup>

29.9 By way of summary, the more important enhancements were identified as:

- a restructured Welfare Unit;
- a restructured Compliance Unit;
- a new Policy and Legal Unit; and

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<sup>672</sup> The first, being the Code of Practice for the Keeping of Greyhounds in Training, was not published until April 2011.

<sup>673</sup> David OShannessy, 18 February 2016: T893-895.

<sup>674</sup> GRNSW, Response 26 to Governance and Social Contributions Issues Paper dated 15 January 2016, [6(a)].

<sup>675</sup> It had previously submitted to the Five Year Statutory Review of the *Greyhound Racing Act 2009* (NSW) that the status quo should be maintained. That submission was made on 13 February 2015, three days prior to the *Four Corners* program.

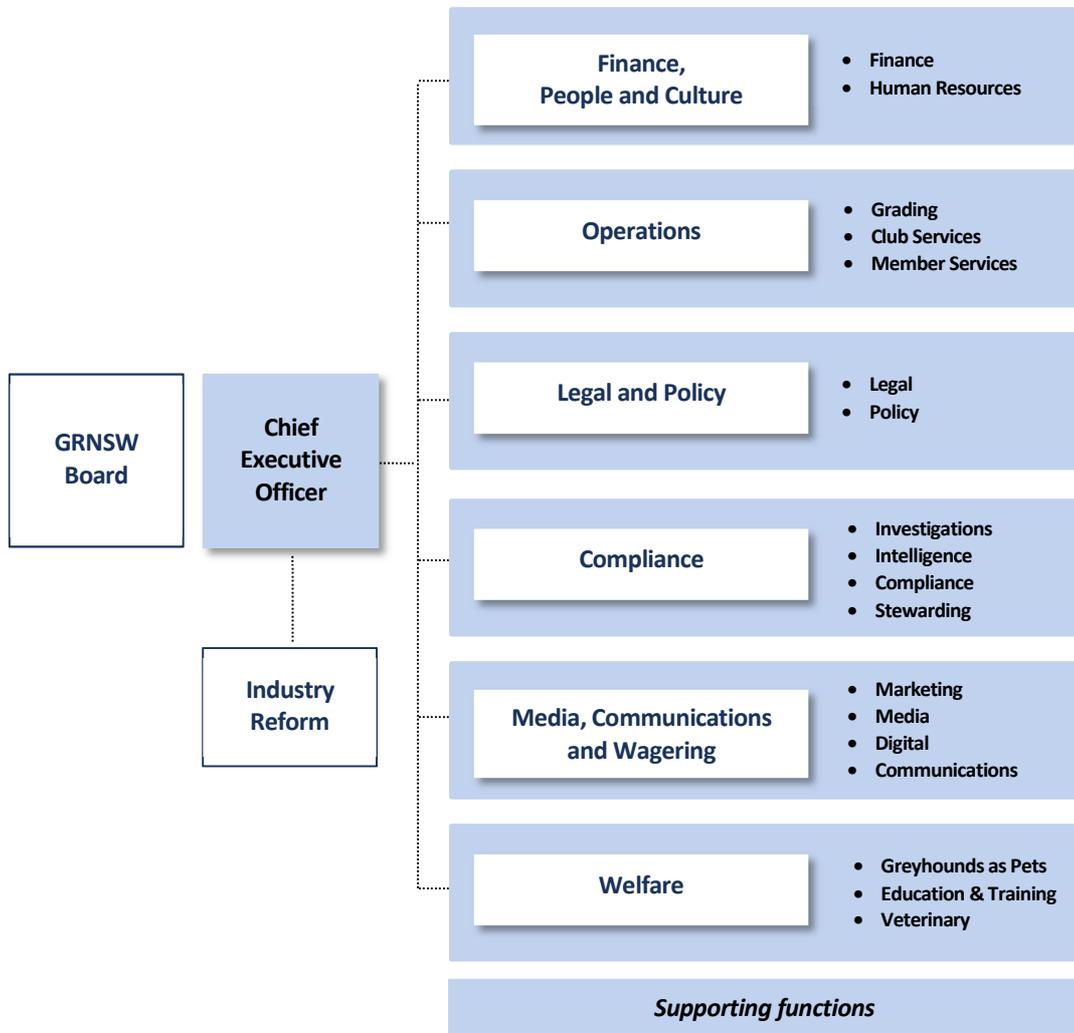
<sup>676</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [122].

<sup>677</sup> *Ibid*, [132].

- a new Finance, People and Culture Unit.<sup>678</sup>

29.10 The current structure of GRNSW includes these enhancements. It is shown in Figure 29.1 below. It was described by the Joint Working Group (“JWG”) as representing an “organisational refresh”.<sup>679</sup>

Figure 29.1 Current structure of GRNSW management



Source: Joint Working Group Report.

29.11 GRNSW also proposed that the number of Board members should be increased from five to seven so as to accommodate industry representation. This proposal is addressed by the Commission in Chapter 30.

29.12 GRNSW advanced a number of grounds in support of maintaining the status quo.

<sup>678</sup> Ibid, [133].

<sup>679</sup> Joint Working Group (“JWG”), “Implementing Reform in the NSW Greyhound Racing Industry – Report to the Interim Chief Executive of Greyhound Racing NSW from the Joint Working Group” (29 January 2016) (“the JWG Report”), p. 58 at [5.3.3].

### *Separation has been tried and tested*

29.13 The first ground advanced by GRNSW was that separation of the commercial and regulatory functions had been unsuccessfully tried and tested in this State.<sup>680</sup> Reference was made to the report of Malcolm Scott in 2008 (“the Scott Report”).<sup>681</sup> The Scott Report was one catalyst for the current structure. GRNSW pointed to suggestions made by Mr Scott that the relationship between the existing commercial bodies and the Greyhound and Harness Racing Regulatory Authority (“GHRRA”) had been one of disengagement and antagonism.<sup>682</sup> It would seem that GRNSW was referring to the following observation made by Mr Scott:

I have observed that the relationship between existing commercial bodies and the GHRRA is one of disengagement and antagonism. Doing the best I can to disregard current personalities and those parts of the audit reports which can be seen as dealing with establishment and teething issues, it is apparent that the commercial organisations and the GHRRA are driving towards different targets and objectives. Without a common, unifying person or structure the organisations appear to act tangentially, each believing that it is acting in the best interests of the industry, but however acting antagonistically to each others (sic) views as to the respective organisations value to the industry.<sup>683</sup>

29.14 Similar problems were referred to when the Greyhound Racing Bill 2009 and the Harness Racing Bill 2009 were debated in the NSW Parliament. The Hon. George Souris MP, member for the Upper Hunter and Minister for Racing, said:

On the question of integrity, the separation of commercial and regulatory functions was by its nature a strong safeguard for the integrity of the two codes. I understand, however, that it was an unhappy marriage from the start and that at some point in the future, that point now having arrived, there would be some kind of dissolution of this marriage. The devolution of regulatory functions exposes the integrity of the code to commercial cost cutting and similar practices. It is obvious that an integrity auditor would need to be included, albeit an additional layer of either bureaucracy or governance. Despite the unhappiness that the two codes constantly exhibited towards the combined regulatory authority, it nonetheless was separated from the commercial functions that the other two organisations undertook...<sup>684</sup>

29.15 Past personalities, past disengagement and past antagonism are of little relevance in 2016. What is relevant is the need to establish and maintain integrity in the industry and to determine the best way that this can be achieved. Animal welfare was not a matter considered in the Scott Report. The terms of reference were limited, and were by and large confined to the effectiveness of the then current legislation and possible improvements to the role and advancement of stewards.

29.16 The “combined regulatory authority”, established in October 2004 (namely, the GHRRA), no longer exists. It was created to safeguard integrity across two racing industries. There is no doubt that following its creation there were shortcomings identified in its operations. One of the principal reasons for its establishment was that it was expected to achieve operating efficiencies based on a feasibility study completed in August 2003 by a Department of Gaming and Racing Working Party (“the DGR GRA/HRA Amalgamation Report”), the recommendations of which were accepted by Government.<sup>685</sup> The primary objective of the amalgamation was to return savings to the two racing industries and to maintain integrity at a time when the industries were under financial pressures. Revenues were rising but competition for the gambling dollar was also

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<sup>680</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [122].

<sup>681</sup> Malcolm Scott, “2008 Independent Review of the Regulatory Oversight of the NSW Racing Industry” (June 2008) (“the Scott Report”).

<sup>682</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [124].

<sup>683</sup> Scott Report, p. 24.

<sup>684</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 7 May 2009, 14871 (George Souris).

<sup>685</sup> NSW Department of Gaming and Racing Working Party, “Feasibility of the Amalgamation of the Greyhound Racing Authority and the Harness Racing Authority” (August 2003).

increasing and participant levels were falling. The fact that the two industries contributed the majority of the GHRRA's annual budget (in excess of \$5m) put the GHRRA under close scrutiny for monies saved through the efficiencies of amalgamation and spent on implementing the amalgamation.

- 29.17 There was widespread discontent with the performance of the GHRRA.<sup>686</sup> A Performance Audit carried out by the Auditor-General in 2008 revealed that the amalgamation was not managed effectively.<sup>687</sup> The GHRRA had been slow to implement some of its key objectives and the costs of the amalgamation had increased to an extent where it was unable to meet key objectives.<sup>688</sup> Put simply, the model did not achieve the commercial benefits that the industries anticipated.
- 29.18 The Commission accepts that there are continuing financial pressures on the greyhound racing industry which affect its ongoing viability. Further, it is obvious that the separation of commercial and regulatory functions will not produce cost savings. However, the integrity of the sport, including the welfare of the industry's greyhounds, is now front and centre of the debate over whether the industry should continue at all. If there is to be a new governance model, then it must be based upon a structure designed to ensure that the integrity of the sport, including an unyielding commitment to animal welfare, is not compromised.

### ***The model in Great Britain***

- 29.19 The second argument advanced by GRNSW for maintenance of the existing model was that, in Great Britain, the commercial and regulatory functions of the National Greyhound Racing Club and the British Greyhound Racing Board were unified by the establishment of the Greyhound Racing Board of Great Britain ("the GBGB").<sup>689</sup> This occurred in 2007 following the Independent Review of the Greyhound Industry in Great Britain conducted by Lord Donoughue of Ashton on behalf of the British Greyhound Racing Board and the National Greyhound Racing Club ("the Donoughue Review"). The Donoughue Review occurred as a consequence of evidence published in the media that healthy greyhounds were being destroyed in large numbers. In his report published in November 2007 ("the Donoughue Report"), Lord Donoughue identified a number of serious welfare issues which plagued the greyhound industry in Great Britain at the time. Many still exist in Great Britain and many also exist in the industry in NSW today.
- 29.20 GRNSW relied upon the Donoughue Report as having identified that having separate bodies created:
- ... an administrative and regulatory structure that was too complex and this had led to inefficiency, duplication, slow decision making without adequate consultation at times and frequent tensions and disputes between the bodies making it difficult for the industry to speak with one voice when it mattered.<sup>690</sup>
- 29.21 That is to overstate the position. Lord Donoughue was expressing the views and perceptions of a number of persons who had given evidence to his inquiry.<sup>691</sup>
- 29.22 The greyhound racing industry in Great Britain is different from that which exists in NSW. Two different types of commercial racing take place in the Great Britain. First, there are tracks licenced by the GBGB. Races take place under the GBGB's Rules of Racing. There are 24 licenced tracks. Second, there are around five independent or "flapping" tracks which are not licenced by

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<sup>686</sup> Brett Hogan, 1 October 2015: T301.28-30; Professor Percy Allan, 1 October 2015: T359.37.

<sup>687</sup> NSW Auditor-General, "Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority" (April 2008) ("the Auditor-General GRA/HRA Amalgamation Report"), p. 3.

<sup>688</sup> Auditor-General GRA/HRA Amalgamation Report, p. 3.

<sup>689</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [125].

<sup>690</sup> *Ibid*, [126].

<sup>691</sup> Lord Donoughue of Ashton, "Independent Review of the Greyhound Industry in Great Britain" (27 November 2007) ("the Donoughue Report"), p. 54.

the GBGB.<sup>692</sup> These tracks do not need to abide by the same Rules of Racing, although those who manage them must be licenced by local government authorities. Pursuant to the *Welfare of Racing Greyhounds Regulations 2010* (UK) (“the Greyhound Welfare Regulations (UK)”), licences are granted by local authorities on condition that certain minimum welfare standards are observed on race days, including the collection of injury statistics, and that a database is kept containing greyhound identification and owner details.<sup>693</sup>

29.23 It is important to note too that the GBGB is permitted to regulate the industry *only* because it has been accredited by the United Kingdom Accreditation Service as demonstrating compliance with the ISO/IEC Guide 65: 1996 of the International Organization for Standardization’s standards for bodies operating product certification; in this case, systems in relation to the service of the regulation of greyhound racing tracks.<sup>694</sup> If it were not so, the GBGB would be prohibited from being involved in any licensing or registration activities involving greyhounds by s. 13(1) of the *Animal Welfare Act 2006* (UK).

29.24 GRNSW has no like accreditation and, on the basis of the evidence and materials considered by the Commission, it would not currently achieve the standards required to obtain accreditation and maintain it.

29.25 GRNSW did not advance any submission, or point to any evidence, which suggests that the model adopted in Great Britain has been effective to protect the welfare of greyhounds. Some have suggested that it has not been effective. In 2014, GREY2K USA Worldwide and the League Against Cruel Sports published a report, “The state of greyhound racing in Great Britain: A mandate for change”.<sup>695</sup> The report called for the establishment of an independent welfare regulatory body which would oversee all greyhound racing (both licenced and independent) and include representatives from animal welfare organisations. The report suggested that Lord Donoghue’s model had failed to protect the welfare of greyhounds that are purpose bred to race:

In the intervening years have things improved for greyhounds? No. Shrouded in secrecy, greyhounds continue to come last in the race with trainers, owners, bookmakers and punters. This report shows that the life of a greyhound is still filled with abuse, neglect and early death.<sup>696</sup>

29.26 The Greyhound Welfare Regulations (UK) are currently the subject of a statutory review. The Department for Environment, Food and Rural Affairs (“the DEFRA”) is carrying out that review. In response to a petition presented to Parliament to strengthen the legal protection for racing greyhounds, the DEFRA indicated that the review would be examining the effectiveness of the Greyhound Welfare Regulations (UK), including their self-regulatory elements, the requirement to collect injury statistics and how they are used, and the traceability of greyhounds after they leave the sport. The petitioners had expressed concern that the industry had shown that it could not prevent the suffering of greyhounds and that it was time to strengthen the legal framework and introduce independent scrutiny. The petitioners called upon the following matters to be the subject of regulation:

- 1) The public disclosure of injury data from all greyhound tracks.
- 2) Greyhound passports to enable the tracking of every dog from birth to death.

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<sup>692</sup> UK Environment, Food and Rural Affairs Committee, “Greyhound Welfare”, House of Commons Second Report of Session 2015-16 (25 February 2016) (“the EFRAC Report”).

<sup>693</sup> Greyhound Welfare Regulations (UK).

<sup>694</sup> Greyhound Welfare Regulations (UK) cl. 3(2).

<sup>695</sup> GREY2K USA Worldwide and League Against Cruel Sports, “The state of greyhound racing in Great Britain: A mandate for change” (2014).

<sup>696</sup> *Ibid*, p. 6.

- 3) All dogs bred for racing to be rehomed by the track, owner or trainer, not abandoned or passed to animal welfare charities. Healthy greyhounds should never be euthanased.
- 4) A licensing system for breeders and a joint initiative between Britain and Ireland to tackle overbreeding and the trade in greyhounds.<sup>697</sup>
- 5) An independent regulatory body that oversees all dog racing and includes representatives from animal welfare organisations.<sup>698</sup>

29.27 On 17 December 2014, and in anticipation of the upcoming Five Year Statutory Review of the Greyhound Welfare Regulations (UK), the welfare of greyhounds was the subject of debate in the House of Commons. The Labour Co-operative member for Islwyn, Mr Chris Evans MP, argued in favour of the changes advanced in the petition.<sup>699</sup> He had this to say:

We are now four years into self-regulation, and the racing industry's problems are still prevalent, and it is not as if Ministers do not know. The APGAW,<sup>700</sup> Lord Donoughue – who was commissioned by the industry - the Royal Society for the Prevention of Cruelty to Animals, Greyhound Rescue Wales and the League Against Cruel Sports have all shown time and again that some greyhounds lead a life of abuse, neglect and early death...The choice is simple: either we have an independent welfare regulation system backed up by legislation and funded by a greyhound levy, or racing greyhounds will continue to face the horrible conditions that they do now. I look forward to hearing the Minister's thoughts.<sup>701</sup>

29.28 The position in Great Britain is very much in a state of continuing evolution.

29.29 Most recently, current welfare issues in the greyhound industry were considered by the Environment, Food and Rural Affairs Committee of the House of Commons in its Report, "Greyhound Welfare".<sup>702</sup> The Report was prepared following the Committee's own assessment of the Greyhound Welfare Regulations (UK). The Committee found that it was not possible to say how much improvement in the welfare of greyhounds had occurred following the introduction of the Greyhound Welfare Regulations (UK) because of an absence of readily available data concerning key welfare indicators, particularly in relation to injuries suffered while racing.<sup>703</sup> The regulatory requirement to collect data had not been accompanied by a willingness to make data available for public scrutiny or analysis.<sup>704</sup> It also noted that the fate of greyhounds unable to be rehomed at the end of their careers was unclear, although it had been estimated that between 1,000 and 3,700 were unaccounted for each year. Under Rule 18 of the Rules of Racing of the GBGB, owners are solely responsible for greyhounds at the point of retirement. The decoupling of industry responsibility for the post-racing welfare of greyhounds meant that the industry demand for greyhounds did not take into account the cost and number of rehoming placements in the market. Only one in four rehomed greyhounds was funded by the industry.<sup>705</sup>

29.30 Each of the matters referred to above were issues in 2007 when Lord Donoughue conducted his inquiry.

### ***Failure to respond to industry misconduct***

29.31 The third submission advanced by GRNSW in support of maintaining the status quo was that, irrespective of the different structures in other jurisdictions (including separate commercial and

<sup>697</sup> Lord Donoughue had identified Irish breeding practices as a principal cause of the oversupply of greyhounds in Great Britain.

<sup>698</sup> Government and Parliament website, archived petition submitted during the 2010-2015 Conservative – Liberal Democrat coalition government, "Petition to strengthen legal protection for racing greyhounds" (deadline: 30 March 2015).

<sup>699</sup> United Kingdom, *Parliamentary Debates*, House of Commons, 17 December 2014, 556WH (Chris Evans).

<sup>700</sup> Associate Parliamentary Group for Animal Welfare.

<sup>701</sup> United Kingdom, *Parliamentary Debates*, House of Commons, 17 December 2014, 556WH (Chris Evans).

<sup>702</sup> EFRAC Report.

<sup>703</sup> *Ibid*, p. 3.

<sup>704</sup> *Ibid*, [15].

<sup>705</sup> *Ibid*, [64].

regulatory bodies), none have discharged their regulatory roles to respond to industry misconduct (ie. live baiting) or to provide a compelling roadmap for a sustainable sport. GRNSW observed that the fundamental failure in industry supervision has been found across all greyhound racing jurisdictions in Australia and the failure to adequately supervise the sport has been worsened by inaction on several serious and systematic governance, integrity and animal welfare issues.<sup>706</sup>

- 29.32 A number of matters should be noted in relation to this submission.
- 29.33 One is that Tasmania is the only State which had a model where the commercial and regulatory functions of the controlling body are separated. Those states with a more substantial industry, and which carried out inquiries following the public exposure of the practice of live baiting, namely Queensland and Victoria, had controlling bodies which were responsible for both the commercial operations and regulation of the industry. Recommendations were made in both states that there should be a separation of those functions. The recommendations recognised that, irrespective of any failings in supervision and proper governance, the source of the failure to protect the integrity of the industry was the combination of commercial and regulatory functions.
- 29.34 Although it may be true to say that no controlling body has adequately discharged its role to respond to industry misconduct – namely, live baiting – such an observation does no more than beg the question why that occurred. Live baiting has been occurring throughout the industry for many years. GRNSW’s failure to tackle this problem and other welfare issues cannot be attributed solely to individual failings of management. It is also attributable to a structure where commercial considerations could be, and were, promoted at the expense of the welfare of the greyhounds.
- 29.35 Animal welfare issues in the greyhound racing industry are not limited to live baiting. GRNSW has failed to control and address a number of other serious welfare concerns. One example is overbreeding. It is a good example not only because GRNSW failed to address the problem but because it took active steps to promote excessive breeding as is evidenced by its recently abandoned Blue Paws Breeders and Owners Incentive Scheme (“Blue Paws”). Blue Paws, which had been established in 2006, was designed to promote investment in the NSW greyhound breeding industry by providing financial incentives to breeders. It was suspended in May 2015 and came to an end on 1 July 2015.<sup>707</sup>

***Current deficiencies “are not insurmountable”***

- 29.36 The fourth submission which GRNSW advanced in support of the existing model was that “the tipping point to warrant divesting regulatory functions has not been reached and the deficiencies within the current structure are not insurmountable.”<sup>708</sup>
- 29.37 In light of the exposure of live baiting in February 2015, and the evidence of other serious welfare issues that GRNSW has failed to address, this submission cannot be accepted. It is troubling that it was advanced at all. If the “tipping point” has not yet been reached, then what further acts of cruelty and breaches of welfare standards need to be documented and exposed before GRNSW would be prepared to recognise that the “tipping point” has been reached? It has been reached. It was likely reached years ago. Indeed it was likely reached well before GRNSW in its current manifestation came into existence in 2009.

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<sup>706</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [129].

<sup>707</sup> GRNSW website, ‘Question and Answer’ document “Closure of Blue Paws Scheme” (undated): <https://www.thedogs.com.au/Uploads/Closure%20of%20Blue%20Paws%20Scheme%20FAQs.pdf> (accessed 11 June 2016).

<sup>708</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [130].

### **Strategic objectives, duplication and inefficiency**

29.38 The fifth submission which GRNSW put to the Commission in support of the existing model was that any decision to separate the commercial and regulatory functions would:

... risk stymieing strategic objectives for the industry, promote duplication and inefficiency, and accrue increased expenditure and liabilities for government all without the real benefit of improved governance, integrity and animal welfare outcomes.<sup>709</sup>

29.39 GRNSW has not identified the particular “strategic objectives” which it claims might be impeded by the separation of commercial and regulatory functions. To the extent that GRNSW’s “strategic objectives” include greyhound welfare they can only be enhanced by vesting the power to oversee the implementation and maintenance of welfare standards in a body which is not driven by commercial imperatives. The suggestion that there would not be “improved governance, integrity and animal welfare outcomes” is plainly wrong. The evidence and other materials presented to the Commission demonstrate beyond any doubt the substantial risk to welfare created by the consolidation of commercial and regulatory functions in the one body. Regrettably that risk was realised.

29.40 Public confidence in the industry is also vital if it is to continue. Establishing or restoring public confidence may never occur but it is unlikely to occur if the status quo is maintained. A lack of public trust and confidence does more than impede GRNSW’s “strategic objectives”, whatever they might be; it threatens the very existence of the industry. A greyhound racing industry cannot survive unless animal welfare standards consistent with community expectations are introduced and public confidence is re-established and maintained. That is not a “strategic objective”. It is a given.

29.41 If a new model is adopted, there will be little duplication or inefficiency. Moving regulatory functions to another body means that GRNSW will no longer be performing those functions. That there will be increased expenditure cannot be gainsaid. However, the cost reflects what is needed to properly regulate the industry. It is another question whether the industry will be financially viable. That question is addressed in Chapter 25.

29.42 More recently, GRNSW refined its fifth submission. It suggested that the commercial and regulatory functions should not be “entirely” separated because this would:

.... stymie the reform agenda process that the industry so desperately needs. Further, increases in operating costs, the loss of flexibility under integrated approaches to both functions, and a disharmony arising from entities with incongruent objectives will only unwind the benefits that the industry has already started to realise since February 2015.<sup>710</sup>

29.43 The Commission does not accept this submission. In other Chapters of this Report, it has examined and addressed the component parts of what it understands GRNSW’s “reform agenda” to be. Much of it remains aspirational and unsupported by detailed implementation plans. The industry does not desperately need a reform agenda process. It desperately needs actual reform. If GRNSW is genuinely committed to the protection of the integrity of the industry, including proper welfare standards, it is inconceivable that it would have objectives which are “incongruent” with those of any new regulator. Similarly, a new regulator would not seek to unwind any measurable improvements which the industry has achieved since February 2015. It would seek to maintain and enhance them.

### **Industry supervision**

29.44 GRNSW’s sixth submission concerned industry supervision.

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<sup>709</sup> Ibid.

<sup>710</sup> GRNSW, Response 26 to Governance and Social Contributions Issues Paper dated 15 January 2016, p. 11.

- 29.45 On 18 February 2016, GRNSW released an Industry Supervision Strategy.<sup>711</sup> It sets out a number of “strategic priorities and objectives in relation to industry supervision” and has been drafted on the basis that GRNSW will continue to exercise both commercial and regulatory functions. It too is largely aspirational. It does not contain any real guidance as to how these aspirations will be achieved. To the extent that GRNSW has demonstrated how these or like aspirations will be achieved in other materials, they are addressed in other Chapters of this Report.
- 29.46 In support of the continuation of the existing governance model, GRNSW submitted that there was no compelling evidence to demonstrate that the separation of commercial functions “would improve industry supervision, while supporting responsible development of the sport”.<sup>712</sup>
- 29.47 It is not entirely clear what is meant by this submission. A body exercising regulatory functions would be primarily concerned with maintaining the integrity of the industry by developing and maintaining appropriate standards and ensuring compliance. This would include supervision of the industry in relation to matters which might impact upon the integrity of the sport. If concrete evidence is required to demonstrate that separation of commercial and regulatory functions would improve industry supervision, the operation of GRNSW prior to February 2015 provides that evidence and it is compelling. Had there been a properly constituted and adequately funded regulator without the commercial imperatives which drove GRNSW to all but abandon the proper regulation of the industry, much of what has been exposed by the Commission would not have occurred.
- 29.48 There is nothing in GRNSW’s recent Industry Supervision Strategy which suggests that the integrity of greyhound racing would be better protected by maintaining the status quo. Much of what GRNSW has advanced assumes that continuing improvements will be driven by the quality of the personnel engaged by it and their leadership. This is a particularly dangerous assumption. Whatever the quality of the personnel currently engaged in positions of authority within GRNSW, it is unreasonable to assume that this will necessarily be maintained in the medium to longer term.
- 29.49 The existence of a separate body exercising regulatory functions should not be an impediment to “responsible development of the sport”. In so far as the sport’s development has the capacity to impact negatively upon its integrity, an independent regulator would ensure that this did not occur. Responsible development should go hand in hand with proper regulation.

#### ***Government involvement and entrepreneurial interest factors***

- 29.50 The seventh submission which GRNSW advanced in support of the existing model was that:

... the regulation and management of racing codes requires a mix of government-related agency involvement and industry involvement; a blending of the development that comes from government with the innovative, entrepreneurial and interest factors that come out of the industry. This can only be achieved successfully if both commercial and regulatory functions are contained within the one organisation.<sup>713</sup>

- 29.51 Although management of the commercial aspects of greyhound racing might benefit from “innovative, entrepreneurial and interest factors that come out of the industry”, the same cannot be said in relation to the industry’s regulation. In fact, to have such input gives rise to the risk that commercial considerations would once more compromise the sport’s integrity. If a new body is to regulate the industry, then government involvement will be required. However, it is not self-evident why the commercial operations of the industry would necessarily “require”

<sup>711</sup> GRNSW, “Industry Supervision Strategy 2016”: <<https://www.thedogs.com.au/Uploads/Updated%20-%20GRNSW%20Industry%20Supervision%20Strategy.pdf>> (accessed 11 June 2016)

<sup>712</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [131].

<sup>713</sup> *Ibid*, [131].

government involvement if properly managed. GRNSW has operated independently of government since 2009. There does not appear to be any reason why GRNSW should not remain largely independent of government if its functions are limited to commercial operations.

29.52 As to the involvement of industry participants, there is no reason why GRNSW should not consult them in relation to commercial matters. It is currently required to do so under the provisions of the *Greyhound Racing Act 2009* (NSW) (“the Act”) which concern the Greyhound Industry Consultation Group (“GRICG”).<sup>714</sup>

29.53 If the commercial and regulatory functions of GRNSW are to be separated then it is important that any new body which is the repository of regulatory functions remains independent of GRNSW. Any new body should not be required to consult with industry participants in carrying out its functions. That is not to say that it should not be free to do so, and it may be important to do so, from time to time. What is of greater importance, however, is that any new body should be required to consult with and draw upon the skills and expertise of persons or entities that are independent of the industry. Examples would include those with expertise in governance and regulation, veterinary services, animal ethics, and animal welfare organisations such as RSPCA.

29.54 More recently, GRNSW put to the Commission that to be successful:

... the external system of regulation and oversight for the greyhound racing industry requires greater government and potentially ministerial or Departmental involvement, mandating good governance framework components via legislation, internal structural changes, and an undertaking to design and implement better practice policies and procedures to enable a clearer system of accountability and transparency for GRNSW.<sup>715</sup>

29.55 This seems to be a reformulation of the argument referred to in [29.50]. The Commission agrees that there will be a need to have greater government involvement in the regulation of the industry. The sorry history of self-regulation demonstrates that this must happen. However, that is not an argument which supports maintenance of the status quo. To the contrary, it supports the creation of a separate regulator which is not independent of Government.

#### **Enhanced governance arrangements**

29.56 GRNSW concluded its submission in favour of the status quo by submitting that the current structure of GRNSW, combined with:

... significantly enhanced governance arrangements including leadership around regulatory matters, greater accountability for delivering agreed outcomes and an enhanced organisational operating model, would result in an effective discharge of both its commercial and regulatory functions.<sup>716</sup>

29.57 In support of this submission, GRNSW outlined proposed changes to its operational model in response to what it claims are identified governance and capability gaps.<sup>717</sup>

29.58 Enhanced governance arrangements will not avoid the inherent conflict between GRNSW’s commercial and regulatory functions. GRNSW does not suggest otherwise. Further, with one exception, what has been proposed by GRNSW may do little more than shift the deck chairs. The one exception is its proposal that the number of GRNSW Board members be increased from five to seven with the addition of two industry representatives. That proposal is considered in Chapter 30 of this Report.

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<sup>714</sup> The Act Pt. 5.

<sup>715</sup> GRNSW, Response 26 to Governance and Social Contributions Issues Paper dated 15 January 2016, [6(a)].

<sup>716</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [132].

<sup>717</sup> *Ibid*, Appendix A; See also the proposal in the JWG Report, p. 8.

## Option 2 – “Tri-Code Separation”

29.59 The second option advanced by GRNSW, as an alternative to maintaining the status quo, was a model which it describes as “Tri-Code Separation”.<sup>718</sup> It was put forward as “Option 2”.

29.60 GRNSW has submitted that, although it is “capable” of discharging both its commercial and regulatory functions, it “recognises it may be preferable for an appropriately resourced and independent statutory body to assume the integrity and regulatory functions for all of the three codes of racing.”<sup>719</sup>

29.61 The creation of an independent Racing Integrity Commission was the subject of recommendations made by the Select Committee in its First Report dated March 2014 (“the Select Committee First Report”). Those recommendations were as follows:

### Recommendation 11

That the Minister for Tourism, Major Events, Hospitality and Racing review the integrity roles of the three racing codes, with the aim to establish a single Racing Integrity Commissioner to oversee thoroughbred racing, harness racing and greyhound racing.

### Recommendation 12

That the Minister for Tourism, Major Events, Hospitality and Racing ensure that the Racing Integrity Commissioner has the following powers over each racing body:

- to conduct annual audits of the internal integrity processes and systems;
- to investigate complaints made about the integrity processes and systems;
- to conduct own motion inquiries that do not relate to any specific complaint and may include an investigation into systematic issues in racing;
- to facilitate the exchange of information between the controlling bodies, the NSW Police and other law enforcement agencies, as appropriate;

and that it be funded by the State Government and independent of the controlling bodies.

### Recommendation 13

That if the Minister for Tourism, Major Events, Hospitality and Racing does not implement Recommendation 11, then the greyhound racing Integrity Auditor be replaced with a greyhound Racing Integrity Commissioner with the same powers and funding as Recommendation 12.<sup>720</sup>

29.62 It should be noted that the recommendations of the Select Committee were made in response to concerns over the role and effectiveness of the Integrity Auditor and whether that office should be replaced by a Racing Integrity Commissioner having oversight of all three codes or, alternatively, greyhound racing alone. Animal welfare does not appear to have been a significant consideration. The role of the Integrity Auditor is addressed in Chapter 31.

29.63 The response of Government to these recommendations was that they were supported in principle.<sup>721</sup> A working party was to review the overall integrity arrangements for all three codes and, at the same time as the Five Year Statutory Review of the Act (“the Five Year Statutory Review”) and the *Harness Racing Act 2009* (NSW), the effectiveness of the legislation with respect to the independence of the role and functions of the Integrity Auditor would be examined. The

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<sup>718</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [136]-[140].

<sup>719</sup> *Ibid*, [137].

<sup>720</sup> Select Committee, “Greyhound Racing in New South Wales – First Report” (March 2014), pp. 90-91.

<sup>721</sup> NSW Government, “Government Response to the ‘Select Committee on Greyhound Racing in NSW First Report’” (September 2014), pp. 15-16.

Five Year Statutory Review did not proceed to completion. In May 2015, the Office of Liquor, Gaming and Racing determined that it would defer to this Commission.<sup>722</sup>

- 29.64 The model which was the subject of the recommendations of the Select Committee, or one like GRNSW's proposed tri-code alternative, was supported by a number of parties who made submissions to the Commission.<sup>723</sup> In its submissions to the Commission, the NSW Greyhound Breeders, Owners and Trainers' Association ("GBOTA") supported the establishment of a Tri-Code Racing Commissioner with appropriate powers to undertake oversight and investigation of integrity matters within each of the three codes, reporting directly to government.<sup>724</sup> GBOTA is Australia's largest greyhound racing organisation with operations at nine tracks in NSW. Its submissions were well considered and the Commission found them of considerable assistance in relation to a number of matters which have been the subject of investigation.
- 29.65 The Commission's Terms of Reference do not include a term requiring consideration of the question whether it is appropriate to include the other two racing codes in any recommendations. No evidence has been provided to the Commission suggesting that such a model is either necessary or appropriate.
- 29.66 GRNSW correctly acknowledged that the development of a tri-code alternative would require a number of preliminary steps to be taken. It also suggested that the same issues were considered over a decade ago in the DGR GRA/HRA Amalgamation Report.<sup>725</sup>
- 29.67 The steps which GRNSW identified would need to be taken are:
- (a) formal consultation between government and all three codes of racing to agree on and develop the organisational structure, governance, powers and functions of the new regulator including the development of a new legislative framework;
  - (b) an independent consultant to comprehensively develop an appropriate operating model, estimate the costs of establishing such a body and develop an implementation plan; and
  - (c) the establishment of a team to manage, establish, and guide the three codes of racing through the initial transitional period.<sup>726</sup>
- 29.68 GRNSW also noted that any action to create a tri-code regulator would require substantial support from the other two racing codes and would involve substantial disruption and significant costs to the racing industry.
- 29.69 GRNSW's submissions likely understate the complexity of developing and implementing a tri-code model. On any view, greyhound racing in this State is in "crisis" as has been recognised by both GRNSW and Greyhounds Australasia.<sup>727</sup> It is unlikely that the community would accept as appropriate any further reviews, consultations or delay, in the face of very serious welfare concerns and breaches of appropriate welfare standards which have likely continued for decades, if not longer.
- 29.70 The question considered by the Commission is whether the regulatory function should be taken away from GRNSW. It may be that at some future point in time Government may consider that it would be appropriate to place all three codes under the one regulator and undertake the lengthy process of implementing that outcome. That will require extensive inquiry, consultation

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<sup>722</sup> NSW Government, "Five Year Statutory Review of the *Greyhound Racing Act 2009*: Review Report" (May 2015).

<sup>723</sup> For example: GRICG, Submission 114 to the Commission dated 2 July 2015, [7].

<sup>724</sup> GBOTA, Submission 664 to the Commission dated 5 July 2015, p. 9.

<sup>725</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [139].

<sup>726</sup> *Ibid.*

<sup>727</sup> *Ibid.*, Appendix K.

and time. And this is precisely what is envisaged by GRNSW in its submissions advancing the tri-code alternative.

- 29.71 GRNSW's tri-code solution is no solution at all. It merely defers steps which must be taken now to protect the industry if it is to continue.

### Option 3 – Transfer of regulation to another body

- 29.72 The third option advanced by GRNSW as an alternative to maintaining the status quo was the "carve out".<sup>728</sup> It was put forward as "Option 3".
- 29.73 The "carve out" is a model which transfers the regulatory functions of GRNSW to another body. Nothing has been advanced by GRNSW to support such a model. Rather, it advanced a number of reasons why there should *not* be a "carve out". They are as follows.
- 29.74 First, the model would present an increased risk of stymieing strategic development of the sport.<sup>729</sup>
- 29.75 This has already been addressed in relation to Option 1 above. If transferring the regulatory functions of GRNSW to a new body significantly improves the integrity of the sport, including achieving animal welfare standards which are acceptable to the wider community, then that can only promote the development of the sport. What will stymie the development of the sport are dysfunctional regulation and a culture within the industry which is not committed to change.
- 29.76 Second, the stymieing of strategic development will occur through "unnecessary duplication, combative interactions and contest for resources."<sup>730</sup>
- 29.77 This has been partly addressed in relation to Option 1 above. It is difficult to see how there would be duplication of resources if the regulatory functions are carried out by a new body. GRNSW will simply cease to perform them. Further, there are some resources which could be shared. An example is the OzChase system. That is not to say that there will not be a cost. There will be.
- 29.78 The likelihood of "combative interactions" is a surprising matter to advance as a reason why GRNSW should retain both commercial and regulatory functions. It suggests that there will be considerable resistance by GRNSW and industry participants to the maintenance of integrity and the enforcement of appropriate standards. If the industry cares about the integrity of the sport and its survival either in the short, medium or longer term then "combative interactions" ought to be avoided.
- 29.79 GRNSW also relied on the 2014 Report of the National Commission of Audit ("the NCA Report") as a reason why a new regulatory body should not be established.<sup>731</sup> The NCA Report was the result of an examination of the Commonwealth's finances by the National Commission of Audit.<sup>732</sup> It provided advice and recommendations on what that Commission believed should be done to ensure that government spending was placed on a sustainable long term footing and achieved savings sufficient to deliver a surplus of 1% of GDP by FY24. It found that there were too many government bodies in Australia and that this led to duplication, overlap, unnecessary complexity, a lack of accountability, the potential for uncoordinated advice and avoidable costs. It noted that there were 194 principal Commonwealth bodies operating under the *Financial*

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<sup>728</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [141].

<sup>729</sup> *Ibid.*

<sup>730</sup> *Ibid.*

<sup>731</sup> *Ibid.*, [142]-[143].

<sup>732</sup> National Commission of Audit, "Towards Responsible Government" (2014) ("the NCA Report").

*Management and Accountability Act 1997* (Cth) and the *Commonwealth Authorities and Companies Act 1997* (Cth). It also noted that the need for independence *alone* did not justify the establishment of a new operational body,<sup>733</sup> and that a major misconception is that the creation of an independent body will lead to greater independence when, often, such independence may be established without the need to create an entirely separate body.<sup>734</sup>

29.80 GRNSW's reliance upon the NCA Report is misconceived. It was dealing with the need for a body to be independent of Government as a justification for the creation of a new body. That is not relevant here. What is in issue here is whether the regulation of the industry should be independent of the body which exercises commercial functions.

29.81 Finally, GRNSW submitted that the three codes of racing:

... exist in a highly competitive national wagering market and it would therefore be inequitable to force increased regulation on the greyhound racing industry at the expense of its competitiveness...<sup>735</sup>

29.82 There is nothing "inequitable" in imposing greater regulation on an industry where self-regulation has failed. The integrity of the industry is of prime importance. Increased regulation and adherence to proper standards may have a negative financial impact upon the industry. However, that will occur whether or not there is a formal separation of regulatory and commercial functions. It does not follow that the industry will be less competitive in the wagering market. Even if that were not so it is hardly an answer to the adoption of a model which is necessary to restore and maintain the industry's integrity and public confidence in it. It is unlikely that most members of the public would have any real interest in the industry's competitiveness in the wagering industry. On the other hand they would be rightly concerned if the integrity of the industry, including the regulation of appropriate animal welfare standards, was compromised in the interests of maintaining a competitive edge in wagering markets. What GRNSW has put is just the sort of commercial focus which has undermined the integrity of the greyhound industry in the past.

## Examination of Governance Models by other State Governments

29.83 The tension between commercial and regulatory functions is not unique to NSW.

### Queensland

29.84 On 9 April 2015, the Queensland Governor in Council made an order approving the establishment of a Commission of Inquiry under the *Commissions of Inquiry Act 1950* (Qld) ("the MacSporrán Inquiry").

29.85 On 1 June 2015, the Commissioner, Alan MacSporrán QC, presented a final report, "Queensland Greyhound Racing Industry Commission of Inquiry" ("the MacSporrán Report").<sup>736</sup>

29.86 The Queensland greyhound racing industry had a number of levels of governance, each directed at preserving the integrity of the greyhound racing code and the welfare of greyhounds. Racing Queensland ("RQ"), the Office of Racing and the Racing Animal Welfare and Integrity Board each had powers and functions to detect, assess, and mitigate animal welfare and integrity issues. Two broad issues were considered in the MacSporrán Report, namely:

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<sup>733</sup> NCA Report, p. 204.

<sup>734</sup> Ibid, p. 217.

<sup>735</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [145].

<sup>736</sup> Alan MacSporrán QC, "Queensland Greyhound Racing Industry Commission of Inquiry" (1 June 2015) ("the MacSporrán Report").

- whether the failure to adequately address integrity and animal welfare issues was due to a failure to collaborate and execute a holistic compliance strategy; or
- whether the failure to adequately address integrity and animal welfare issues was due to a failure by each level of governance to identify the strategic opportunity to install an effective qualitative system for checking and monitoring integrity and animal welfare.<sup>737</sup>

29.87 The *Racing Act 2002* (Qld) established the Queensland All Codes Racing Industry Board trading as RQ as the Controlling Body for the thoroughbred, harness and greyhound codes of racing.<sup>738</sup> It had overarching responsibility for all codes. The principal function of RQ was to manage the codes of racing in a way that was in the best interests of all three codes from a strategic and operational perspective.<sup>739</sup> Control boards were also established for each code. Collectively, RQ and the control boards oversaw the strategic direction of racing for all codes in Queensland. The *Racing Act 2002* (Qld) also established the Racing Animal Welfare and Integrity Board.<sup>740</sup> It was responsible for monitoring, advising and making recommendations to the Chief Executive of RQ about its animal welfare and integrity policies and the performance of functions and exercise of powers by integrity officers.<sup>741</sup> Its functions were seen to be primarily educative rather than disciplinary.<sup>742</sup>

29.88 The *Racing Act 2002* (Qld) also established the Racing Integrity Commissioner who was to be recommended by the Minister and appointed by the Governor in Council.<sup>743</sup> The functions of the Racing Integrity Commissioner were limited to conducting audits and investigating the integrity processes of a control body and investigating complaints about an integrity process of a control body.<sup>744</sup>

29.89 The MacSporran Inquiry found that:

- (a) the system of self-regulation had failed to ensure integrity in the industry and had failed to safeguard animal welfare;<sup>745</sup>
- (b) RQ had failed to ensure integrity in the industry and safeguard animal welfare because it did not operate an overall strategy to deal with the risk of integrity and animal welfare across all three codes of racing,<sup>746</sup> and
- (c) RQ's ability to meet these obligations was compromised by the conflict of interest inherent in having oversight and control of both the commercial and integrity aspects of the industry.<sup>747</sup>

29.90 The MacSporran Inquiry concluded that the model was flawed. It recommended an alternative model in which the commercial and integrity aspects of the industry were completely separated. It found that the existing model was designed to allow the control body to concentrate on the business of racing and maximise its prospects of commercial success. It recommended that a Board be established as the control body for all three racing codes.<sup>748</sup> That Board would be responsible for the commercial operation of the three codes. The MacSporran Inquiry also

<sup>737</sup> MacSporran Report, [111]-[112].

<sup>738</sup> *Racing Act 2002* (Qld) s. 9AA, s. 9AB; Racing QLD was established on 1 May 2013 by way of an amendment to the *Racing Act 2002* (Qld).

<sup>739</sup> *Racing Act 2002* (Qld) s. 9AF.

<sup>740</sup> *Racing Act 2002* (Qld) s. 114.

<sup>741</sup> *Racing Act 2002* (Qld) s. 115.

<sup>742</sup> MacSporran Report, [141].

<sup>743</sup> *Racing Act 2002* (Qld) s. 113AL.

<sup>744</sup> *Racing Act 2002* (Qld) s. 113AN.

<sup>745</sup> MacSporran Report, [21].

<sup>746</sup> *Ibid*, [22].

<sup>747</sup> *Ibid*, [23].

<sup>748</sup> *Ibid*, [46].

recommended that a new statutory authority, the Racing Integrity Commission, be established to operate in respect of all three codes. There would no longer be self-regulation. The Racing Integrity Commission would represent the State. The MacSporrán Inquiry recommended that the head of the body, a Queensland Racing Integrity Commissioner, would be appointed full-time and would report directly to the Minister responsible for administering the *Racing Act 2002* (Qld).<sup>749</sup> The new Racing Integrity Commission would be entirely focussed on ensuring integrity within the industry, with the aim of restoring public confidence.<sup>750</sup> The new model would also provide for the prioritisation of animal welfare issues with input from experts in relation to policy matters.<sup>751</sup>

29.91 On 22 April 2016, the *Racing Integrity Act 2016* (Qld) was passed by Queensland Parliament, having been introduced in December 2015 by the Hon. Bill Byrne MP. The *Racing Integrity Act* implements recommendations 1-3 of the MacSporrán Report. Specifically, the Act:

- established the new Queensland Racing Integrity Commission which is responsible for the management of animal welfare and integrity matters within the racing industry;
- amended the *Racing Act 2002* (Qld) to reform the structure of the Queensland All Codes Racing Industry Board, including renaming the board as the Racing Queensland Board, and to dissolve the three individual racing code boards, the Racing Animal Welfare Integrity Board and the Racing Disciplinary Board; and
- amended the *Animal Care and Protection Act 2001* (Qld) to provide improved information sharing capacity and broaden the powers of authorised officers to investigate animal welfare matters.<sup>752</sup>

29.92 The Queensland Racing Integrity Commission (“QRIC”) will commence operation on Friday 1 July 2016. On 13 February 2016, the Queensland Racing Minister announced that Ross Barnett, a former Deputy Commissioner of the Queensland Police Service, would be appointed as the Queensland Racing Integrity Commissioner designate to lead the establishment of the QRIC. The Commissioner has far greater powers and responsibilities than those of the previous racing Commissioner. The QRIC is to be independent of RQ. Deputy Commissioners will also be required to be independent of the racing industry for the two years leading up to their appointment.<sup>753</sup> It is expected that the Queensland Racing Integrity Commission will be established following the passage of the Racing Integrity Bill.

## Victoria

29.93 On 17 February 2015, the Victorian Racing Integrity Commissioner, Mr Sal Perna, announced the commencement of a “2015 Own Motion Inquiry into Live Baiting in Greyhound Racing in Victoria”. In his June 2015 final Report (“the Perna Report”),<sup>754</sup> Commissioner Perna recommended that the *Racing Act 1958* (Vic) be amended to establish one statutory independent body with accountability for racing integrity across the three codes, removing such responsibility from the controlling bodies. The intention was to confer all the powers, privileges and authorities of stewards, integrity and welfare staff (including powers over non-licensed persons) and to transfer current integrity services staff (eg. stewards and welfare officers) and

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<sup>749</sup> Ibid, [37], [39]-[42].

<sup>750</sup> Ibid, [24].

<sup>751</sup> Ibid, [25].

<sup>752</sup> Queensland Parliament, Parliamentary Committees, “Racing Integrity Bill 2015”, Report No. 15, 55<sup>th</sup> Parliament (March 2016), pp. 3-4.

<sup>753</sup> Racing Integrity Bill (No 1) 2015 (Qld) s. 18.

<sup>754</sup> Commissioner Sal Perna, “2015 Own Motion Inquiry into Live Baiting in Greyhound Racing in Victoria” (June 2015) (“the Perna Report”).

existing integrity budgets to the newly formed body.<sup>755</sup> Commissioner Perna found that integrity, which included stewards and welfare officers amongst others, must be and must be seen to be independent of any management influence and commercial concerns of a controlling body. A dedicated professional body tasked with preventing, detecting and enforcing the Rules of Racing, with close working relationships with other intelligence and law enforcement bodies, was seen as critical to ensure the integrity of racing in Victoria.<sup>756</sup>

- 29.94 The recommendation to establish a statutory body with accountability for racing integrity across the three racing codes was supported in principle by the Victorian Government. The Victorian Minister for Racing, the Hon. Martin Pakula MP, appointed Mr Paul Bittar to conduct a review and develop a new integrity model for all three codes.<sup>757</sup> The purpose of the review was to provide a set of recommendations based upon a consideration of enhanced collaboration between the codes, greater transparency of integrity services functions, and consideration of the separation of integrity functions from commercial.
- 29.95 The Victorian Government released the report of Mr Bittar's review on 19 May 2016.<sup>758</sup> Mr Bittar did not recommend that an independent statutory body be established with accountability for racing integrity across all three codes. He recommended the establishment of a new body, the Victorian Racing Integrity Unit ("VRIU"), which would be responsible for the delivery of integrity services across the three codes of racing.<sup>759</sup> The new body would be a private company with the three codes as its shareholders. There would be an independent Board of five members. Mr Bittar proposed that there should be an independent appointments panel, no sitting member of the Boards of the three codes should be eligible for appointment to the VRIU Board, and that the appropriateness of registered owners being eligible for the Board should be considered. He also recommended that the Minister should approve the final appointments to the Board but the appointments should be only those considered by the appointments panel.<sup>760</sup>
- 29.96 Mr Bittar also recommended that the appeals and disciplinary system be restructured to remove appeals to the Victorian Civil and Administrative Tribunal from decisions by the Racing Appeals and Disciplinary Boards of each code and to establish a single cross-code Racing Appeals and Disciplinary Board.<sup>761</sup>
- 29.97 The Victorian Government accepted the recommendations in principle. They are to be implemented over a period of two years.<sup>762</sup>

## Tasmania

- 29.98 In Tasmania, the commercial body responsible for the sustainability of all three codes of racing is Tasracing, a state-owned company. The body responsible for regulating all three codes is Racing Services Tasmania. It is a division of the Department of State Growth.
- 29.99 On 17 February 2015, the Tasmanian Chief Veterinary Officer, Biosecurity Tasmania, and the Director of Racing, Racing Services Tasmania, were instructed by the Tasmanian Minister for

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<sup>755</sup> Perna Report, p. 109.

<sup>756</sup> *Ibid.*, [322].

<sup>757</sup> Mr Bittar was previously the Chief Executive Officer of the British Horseracing Authority and New Zealand Thoroughbred Racing.

<sup>758</sup> Paul Bittar, "Review of the Integrity Structures of the Victorian Racing Industry" (April 2016) ("the Bittar Report").

<sup>759</sup> *Ibid.*, p. 9.

<sup>760</sup> *Ibid.*, p. 45 at [6.4].

<sup>761</sup> *Ibid.*, p. 11.

<sup>762</sup> Media Release, "Bittar Review of the Integrity Services of the Victorian Racing Industry", *Victorian Government – Justice and Regulation website*:

<<http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/bittar+review+of+the+integrity+structures+of+the+victorian+racing+industry>> (accessed 11 June 2016).

Racing to undertake a review of animal welfare arrangements in the Tasmanian greyhound racing industry to ensure that there was a robust system in that State.

- 29.100 On 13 March 2015, the Chief Veterinary Officer and the Director of Racing published their final report (“the Tasmanian Report”).<sup>763</sup> They noted that Tasmania’s separation of commercial and integrity functions as a regulation model, with separate reporting responsibilities and funding, was then unique in the Australian racing environment although this had not always been the case.<sup>764</sup> It overcame, in many ways, the criticism that the industry “self regulates”. It was a model which they anticipated would be “scrutinised by other jurisdictions in their consideration of the current welfare issues”.<sup>765</sup>
- 29.101 On 18 March 2015, the Tasmanian Parliament established a Joint Select Committee to inquire into the greyhound racing industry in that state. A report has not yet been published. Its Terms of Reference do not suggest that there has been an examination of the appropriateness of the current industry governance model.<sup>766</sup>

## Combining commercial and regulatory functions has not worked in other jurisdictions

- 29.102 The largest greyhound racing industries in Australasia exist in NSW, Victoria and Queensland.
- 29.103 The recent inquiries in Victoria and Queensland found that the combination of commercial and regulatory functions in the one body had the potential to undermine the integrity of the sport. In Queensland, Commissioner MacSporran recommended that a separate body should be established to exercise the regulatory functions of the three codes. In Victoria the Racing Integrity Commissioner came to the same view. Mr Bittar’s review suggested a model which did not require the establishment of a new body but rather the supply of integrity services via a service vehicle in which the three codes were shareholders. However, he noted that “in looking to draw out the pros and cons of each model, the local conditions and legislative structure are the factors that have the most bearing on the structure of racing”.<sup>767</sup>
- 29.104 The Commission conducted an extensive inquiry over many months and considered a very substantial body of evidence and other materials. The Commission is satisfied that in NSW the combination of commercial and regulatory functions severely compromised the integrity of the industry. The commercial imperatives of the industry were given precedence. If the industry continues then its financial position is such that commercial imperatives will remain a major driver. If the one body continues to exercise both commercial and regulatory functions then there is a substantial risk of compromise. The Commission does not consider that this can be sufficiently overcome by improved governance and better people within an entity which exercises both functions. The GRNSW Board was well qualified and well-intentioned, but in terms of the integrity of the sport, GRNSW did not achieve what needed to be achieved. The combined model did not work and the Commission has no confidence that it would work in the future. If the industry is to continue, then the commercial and regulatory functions that are currently vested in GRNSW must be separated.
- 29.105 The Commission’s recommended model is addressed in Chapter 30.

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<sup>763</sup> Rod Andrewartha and Tony Murray, “Review of Arrangements for Animal Welfare in the Tasmanian Greyhound Racing Industry” (13 March 2015) (“the Tasmanian Report”).

<sup>764</sup> Prior to the introduction of the Act there was a formal separation in NSW.

<sup>765</sup> Tasmanian Report, p. 5.

<sup>766</sup> Parliament of Tasmania, Joint Select Committee on Greyhound Racing in Tasmania, Terms of Reference.

<sup>767</sup> Bittar Report, p. 13.

## Recommendation

65. The regulatory and commercial functions of Greyhound Racing NSW should be separated. A separate regulator, the NSW Greyhound Racing Integrity Commission, should be established. It should not be independent of Government but it should be independent of Greyhound Racing NSW. It should be a statutory corporation representing the Crown. The NSW Greyhound Racing Integrity Commissioner should be appointed by the Governor on the recommendation of the NSW Minister for Racing to provide oversight of the NSW Greyhound Racing Integrity Commission and its operations.



## 30 Future governance: separation of commercial and regulatory functions

### The current model should be abandoned

- 30.1 The Commission considers that the integrity of the industry can only be maintained if there is a formal separation of the commercial functions of Greyhound Racing New South Wales (“GRNSW”) from its regulatory functions. The combination of those functions has not worked and it will not work moving forward. There is no reasonable alternative model. The Commission received a number of submissions in support of separating the commercial and regulatory functions of GRNSW. They were not only from animal welfare organisations. Some were from industry participants.
- 30.2 By way of example, the NSW Greyhound Breeders, Owners and Trainers’ Association (“GBOTA”) submitted to the Commission that the regulatory and commercial functions of GRNSW should be separated and that this should be done in an effective and cost efficient manner. It also submitted that the commercial functions of GRNSW should be limited to strategy development and management, macro-level branding and marketing, commercial club oversight, industry asset maintenance, race date allocation, grading, promotion of animal welfare and management of the Greyhounds as Pets (“GAP”) Program.<sup>768</sup>
- 30.3 The Commission considers that, if there is to be a separation of commercial and regulatory functions, the promotion and protection of animal welfare should be a primary concern of the regulator but should not be left to the regulator alone. GRNSW must promote and protect animal welfare and animal welfare standards in the industry. It should continue to fund GAP. However, there needs to be greater transparency in relation to GAP’s performance in terms of the number of greyhounds presented for assessment, the number of greyhounds which are assessed as suitable for rehoming, the number of greyhounds which are rehomed, the number of greyhounds which are returned to GAP and the fate of those greyhounds which are assessed as unsuitable or are returned to GAP following rehoming. This requires that the GAP coordinator has a statutory duty to report these matters to any new body vested with regulatory functions.
- 30.4 GBOTA also suggested that regulatory/policing expertise and animal welfare expertise were essential skills for the membership of those charged with management of the regulatory function and that, if possible, membership also include an experienced industry participant.<sup>769</sup> The Commission read this submission as extending to any new body established for the purpose of regulating the industry. It will be apparent from what follows that, while the Commission agrees that members of any new body should include those with animal welfare and regulatory expertise, it does not consider that current industry participants should be appointed as members of that new body.
- 30.5 GBOTA also submitted that the GRNSW Board should include greyhound racing industry representatives and that the Greyhound Racing Industry Consultation Group (“GRICG”) should have greater input into GRNSW Board appointees.<sup>770</sup> The Commission also read this submission as one relating to GRNSW if its regulatory functions were removed and it exercised commercial

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<sup>768</sup> GBOTA, Submission 664 to the Commission dated 6 July 2015, pp. 13-14.

<sup>769</sup> Ibid, p. 14.

<sup>770</sup> Ibid, p. 4.

functions only. Again, it will be apparent from what follows that the Commission does not agree that the members of GRICG or any other industry participant should have membership on the GRNSW Board. It is an entirely different matter whether there should be representation on the Selection Panel. That is a matter for the NSW Minister for Racing.

## Governance of separated entities – an improved model

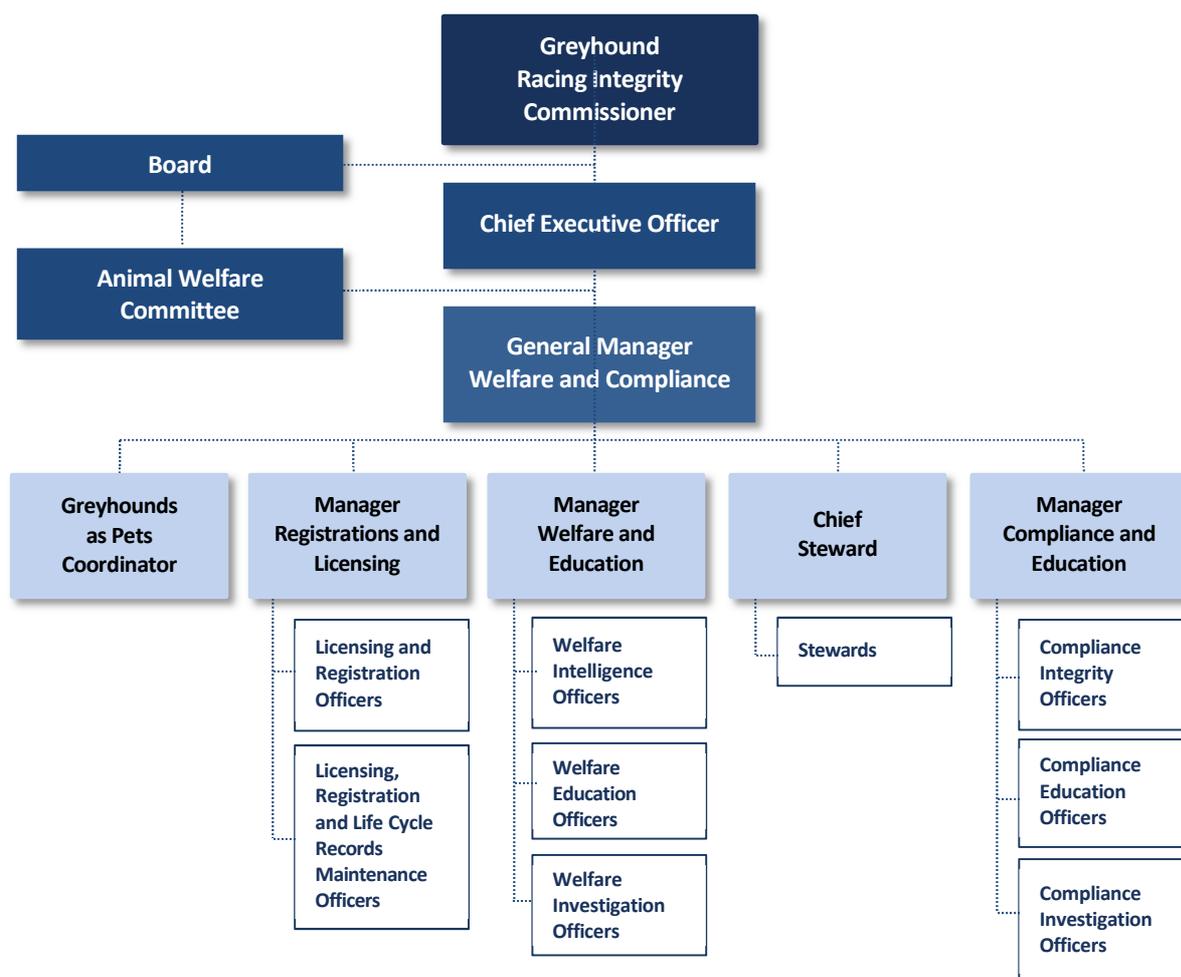
- 30.6 The Commission recommends that a new statutory body, the Greyhound Racing Integrity Commission (“the GRIC”), be established which is dedicated to ensuring the integrity of greyhound racing in NSW.<sup>771</sup> GRNSW has failed miserably as a regulator of the greyhound racing industry. The Commission is of the opinion that, if the industry is to continue in NSW, GRNSW must cease its regulatory function.
- 30.7 The GRIC should be independent of GRNSW but not of Government. Self-regulation has failed. The GRIC should be a statutory body representing the Crown.
- 30.8 A Greyhound Racing Integrity Commissioner (“the GRI Commissioner”) should be appointed by the Governor on the recommendation of the Minister to provide oversight of the GRIC and its operations. It should be a full-time position and the appointee must have held a senior role, or had experience at a senior level in, regulatory administration or regulatory enforcement. The GRI Commissioner should be subject to the direction and control of the Minister except in relation to any report or recommendation made to the Minister or the decision in any disciplinary proceedings.
- 30.9 The GRIC should be required to report to the Minister annually. Apart from including audited financial statements, the report must contain comprehensive details of its operations including disciplinary action taken by it for breach of the GRNSW Rules of Racing (“the Rules”), drug testing results, and the investigation and outcome of breaches of animal welfare standards, including prosecutions conducted by RSPCA NSW, the Animal Welfare League (“AWL”) and the NSW Police Force. The report should specify any steps taken by the GRIC in the year to which the report relates to maintain appropriate welfare standards and enhance them, including education of industry participants.
- 30.10 The GRIC’s annual report should also contain audited figures of registrations and licences, litters whelped, lifecycle outcomes for greyhounds from whelping to the lodgement of R 106 Forms, significant track injuries (being those where there has been a stand down period of 21 days or more or the greyhound has been euthanased), and rehoming figures whether through an industry program such as GAP or otherwise. If an industry participant states in an R 106 Form that a greyhound has been rehomed otherwise than through GAP or has been kept as a pet they must be required to provide precise details which, if necessary, the GRIC can verify. If a breeding quota or some other breeding management system is introduced then the GRIC must administer it and report on its outcomes each year. The annual report should be made available online and free of charge to members of the public.
- 30.11 The Board of the GRIC (“the GRIC Board”) should consist of three independent members appointed by the Minister. One member should have legal qualifications and experience at a senior level in legal practice. A second member should have held a senior role, or have extensive experience, in animal welfare. Like the GRI Commissioner, the third member should hold or have held a senior role, or have experience at a senior level, in regulatory administration or regulatory enforcement.

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<sup>771</sup> This nomenclature has been adopted for the purpose of this document. It is unimportant so long as the name chosen reflects the need for integrity in the sport.

- 30.12 The GRI Commissioner and GRIC Board appointees must be able to demonstrate a sound knowledge of the principles of corporate governance and best practice, have membership of the Australian Institute of Company Directors (or a comparable organisation) and have completed formal training in relation to the requirements of modern corporate governance.
- 30.13 Persons who have at any time been involved as participants in the greyhound racing industry must be ineligible for appointment either as the GRI Commissioner or to the GRIC Board. That would include persons licenced or registered under the *Greyhound Racing Act 2009* (NSW) (“the Act”) or any previous Act, those having had any involvement in greyhound racing clubs whether as a member, employee or otherwise and those having any interest whether direct or indirect in a greyhound otherwise than as a pet.
- 30.14 It is of considerable importance that the GRIC Board and the GRI Commissioner have access to up-to-date and independent advice from animal welfare experts. An Animal Welfare Committee (“AWC”) should be established. It should also comprise three members. One member should be an existing member of the NSW Animal Welfare Advisory Council with appropriate experience in animal ethics. One member should be a senior officer of RSPCA NSW or the AWL nominated by the boards of those organisations. The Commission recognises that as both of these organisations have indicated that they do not support the continuation of the greyhound racing industry, they may be unwilling to participate. If that occurs, then the Minister should be responsible for appointing a member who has had extensive animal welfare experience at a senior level. The third member should be an independent veterinary practitioner with appropriate experience in canine health and behaviour.
- 30.15 The GRIC Board and Chief Executive Officer should be required to seek advice from the AWC in relation to all significant matters concerning the welfare of greyhounds including the formulation of appropriate welfare policies and standards. The GRIC Board and the AWC should be required to meet quarterly. If the GRIC Board or the Chief Executive Officer determines that they will not accept any advice given to it by the AWC, then the matter must be referred to the GRI Commissioner to be resolved. The GRI Commissioner should have the final say. The AWC should be required to report to the Minister annually. Its report should be published and available online to members of the public free of charge.
- 30.16 A suggested model appears below. It is a basic framework and one which would require further development and detail to accommodate the GRIC’s day-to-day operations.

Figure 30.1 Commission’s suggested model for the Greyhound Racing Integrity Commissioner



30.17 It is critical that, if the industry is to continue, the GRIC be properly resourced.

30.18 The particular functions and powers which the Commission recommends should be vested in the GRIC are addressed below. The Commission has had regard not only to the provisions of the Act but to the provisions of the former *Greyhound Racing Act 2002* (“the 2002 Act”). It will be recalled that the 2002 Act was introduced to separate the commercial and regulatory aspects of the industry. The former Greyhound Racing Authority (“GRA”) was the repository of regulatory functions. In making recommendations concerning the functions and powers of the GRIC, the Commission has also had regard to the evidence and other materials presented to it during the course of this inquiry.

30.19 The amendments to the Act that create the GRIC should specify the following objects referable to the GRIC’s operations:

- the control, regulation and integrity of greyhound racing in NSW;
- the maintenance, protection and enhancement of animal welfare and animal welfare standards in greyhound racing; and
- the maintenance of accurate, transparent and publicly accessible records including lifecycle records for each greyhound that is purpose bred to race.

30.20 The functions of the GRIC should include the following:

- The registration of greyhound racing clubs and trial tracks. This is a function which GRNSW has controlled since 2004 when the commercial and regulatory functions were split. That should not continue. The welfare of greyhounds and other animals (animals used for live baits) can be seriously affected by what occurs at trial tracks and as a consequence of a club's operations. The Commission heard evidence of live baiting at trial tracks and of crates of rabbits being sold at one trial track. The conduct of at least one meeting by a greyhound racing club occurred without a vet in attendance.<sup>772</sup> The GRIC should have control over the registration of tracks and clubs including the power to cancel or suspend registration and, in the case of clubs, it should have the power to appoint an administrator in appropriate cases.
- The licencing and registration of industry participants such as bookmakers, breeders, pre-trainers, rearers, educators, owners and trainers. This includes making determinations whether, in the opinion of the GRI Commissioner, persons are fit and proper persons to be licenced or registered.
- The registration of greyhounds.
- The appointment and management of stewards.
- The initiation, development and implementation of policies to protect and enhance the integrity of greyhound racing.
- The development of compulsory animal welfare and compliance education and training and the delivery of such education and training.
- The maintenance of accurate industry records concerning the complete lifecycle of greyhounds that are purpose bred to race, including injuries and outcomes; what Lord Donoughue described as records "from cradle to grave".<sup>773</sup> The amended Act should make it a criminal offence for any industry participant to fail to lodge a R 106 Form or to knowingly provide false or misleading information in such a notification.

30.21 The powers of the GRIC should include:

- The power to make rules for or with respect to the control and regulation of greyhound racing in NSW. That includes the matters covered in s. 23(2) of the Act. It should also include the power to make or adopt standards which relate to greyhound welfare and embed those standards in the Rules. In Chapter 9, the Commission recommended that an enforceable statutory "Greyhound Code of Practice" be established. However, the Commission recognises that statutory codes of practice are difficult to amend expeditiously. There may be occasions when the GRIC would need to create additional standards or enhance others in the short to medium term.
- The power to investigate the conduct of any racing official in respect of the exercise of functions relating to greyhound racing.
- The power to conduct own motion inquiries that do not relate to any specific complaint and may include an investigation into systemic issues in greyhound racing.

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<sup>772</sup> That was the Coonabarabran Coursing Club. On 7 July 2014 the Board of GRNSW suspended the club's operations for three months.

<sup>773</sup> Lord Donoughue of Ashton, report "Independent Review of the Greyhound Industry in Great Britain" (27 November 2007), p. 107.

- The power to hold hearings (if considered appropriate), summon persons and receive oral evidence on oath or affirmation.
- The power to investigate and prosecute breaches of the Rules by way of disciplinary action.
- The power to investigate complaints from members of the public and industry participants concerning compliance and animal welfare.
- The power to impose fines, periods of disqualification and like penalties.
- The power to develop compliance enforcement strategies.
- The power to liaise with RSPCA NSW, the AWL and the NSW Police Force in relation to breaches or suspected breaches of the *Prevention of Cruelty to Animals Act 1979* (“the POCTAA”) and to disclose all relevant information to those bodies, whether or not that information might be regarded as otherwise protected by privacy and personal information protection legislation. The Commission has recommended that Government require the regulator to enter into Memoranda of Understanding (“MOUs”) with both RSPCA NSW and the AWL to facilitate this process, and that it be reviewed annually to ensure that it adequately reflects current needs. It should also consider the development of an MOU with the NSW Police Force. The Commission notes that there is currently an MOU between RSPCA NSW and the NSW Police Force.

30.22 In its day-to-day operations, occasions will regularly arise where there will need to be liaison and consultation between GRNSW and the GRIC. That should not occur in an entirely haphazard and unstructured way. The Commission recommends that, upon the establishment of the GRIC, it should enter into an MOU with GRNSW. The MOU should cover, in particular, the management of and access to any shared resources such as OzChase.

30.23 The Commission notes that on occasion a disagreement may arise between GRNSW and the GRIC concerning whether a matter falls exclusively under the domain of one or the other body. The Commission recommends that a provision similar to s. 5 of the 2002 Act should be introduced into the Act. Section 5 of the 2002 Act gave the Minister power, by order in writing, to determine whether GRNSW or the GRA was the appropriate body to carry out a function under the 2002 Act in relation to the greyhound racing industry. If a dispute arose the Minister could resolve it. This power did not extend to circumstances in which a provision of the 2002 Act provided that a specific function would be carried out by GRNSW or the GRA.

## Board make-up – regulatory and commercial

30.24 The Commission recommends that GRNSW’s function be limited to commercial functions.

30.25 GRNSW does not have a Board but the appointed members are commonly known as the “GRNSW Board”, and it has been referred to as such in this Report.

30.26 As outlined in Chapter 6, currently, GRNSW’s Board must consist of five independent members. They are appointed by the Minister on the recommendation of the Selection Panel with the assistance of a probity advisor.<sup>774</sup> The appointment of a member to fill a casual vacancy is made by the Minister on the nomination of GRNSW. Greyhound industry participants are ineligible for appointment.<sup>775</sup>

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<sup>774</sup> The Act s. 7(1), s 7(4).

<sup>775</sup> The Act s. 6(2).

- 30.27 GRNSW made a number of submissions concerning the appointment process for the GRNSW Board.
- 30.28 In its submissions to the Five Year Statutory Review of the *Greyhound Racing Act 2009* (NSW) (“the Five Year Statutory Review”), GRNSW submitted that it was inappropriate for the Minister to become further involved in the appointment process of the Board as it conflicted with the principle that GRNSW was to operate independently of Government. GRNSW said the Minister’s involvement should be limited to the establishment of the Selection Panel.<sup>776</sup>
- 30.29 In its submission to the Commission, GRNSW claimed that it now believed that there is a greater need for the Minister to play a “larger role” in both the Board appointment process and withdrawal of appointments.<sup>777</sup> It is not clear from GRNSW’s submission what greater role the Minister should have, why it considers this to be necessary, or how it would improve the appointment process or its outcome. It is the Minister who establishes the Selection Panel. In doing so, the Minister can, and likely would, populate the panel with persons having relevant expertise which the Minister might not have. The existence of a Selection Panel between the Minister and any appointee also reduces the risk that appointments would be seen to be political.
- 30.30 GRNSW also drew attention to the fact that the Act stipulates that the Selection Panel must recommend only the number of persons required to be appointed (no more and no fewer) and must recommend a term of office for each person recommended.<sup>778</sup> GRNSW submitted that the effect of this restriction is that the Minister is not provided with any real flexibility or discretion to appoint another person and that a better model would be for the Selection Panel to recommend a number of persons for appointment (ie. a pool of candidates) from which the Minister could make selections. The Commission agrees, although the problem may be more theoretical than real. The Minister can always refuse to accept a particular recommendation thereby requiring a further recommendation. The same provision exists in the *Harness Racing Act 2009* (NSW) (“the HRA”).<sup>779</sup> Until 2011, it also existed in the *Thoroughbred Racing Act 1996* (NSW) (“the TRA”); however the amendments made by the *Thoroughbred Racing Amendment Act 2011* (NSW) introduced a provision which accommodates GRNSW’s concern. Pursuant to s. 7(2)(c) of the TRA, as it currently stands, the Selection Panel for Racing NSW appointees must provide a list to the Minister which “must list more persons than the number of persons required to fill the vacancy or vacancies concerned”. In introducing the amending Bill to the Legislative Assembly, the Minister stated that the purpose of the amendment was to give to the Minister “greater purview over the appointment process”.<sup>780</sup>
- 30.31 Consideration should be given to including a like provision in the Act although it would be preferable to express the requirement in terms of “not less than” the number of persons required to be appointed. A Selection Panel might reasonably come to the view that the number of suitable candidates is no more than the number of available positions.
- 30.32 GRNSW also raised concerns in relation to the composition of the Selection Panel, noting that it should not include former or current GRNSW Board members, former or current GRNSW staff or industry participants and it should include a senior government employee to ensure the Board and appointment process is conducted with rigour.

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<sup>776</sup> GRNSW, Submission 16 to the Five Year Statutory Review dated 13 February 2015, p. 17.

<sup>777</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [161].

<sup>778</sup> The Act s. 7(2).

<sup>779</sup> HRA s. 7(2).

<sup>780</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 11 October 2011, 5948 (George Souris).

- 30.33 Although unstated, GRNSW’s concern in relation to the involvement of GRNSW Board members and staff may have arisen as a consequence of concerns expressed to the NSW Legislative Council’s 2014 Select Committee into Greyhound Racing in NSW (“the Select Committee”) by a number of industry participants that a previous Chair of GRNSW was a member of the Selection Panel for the appointments which took effect in February 2012. The Select Committee noted that this had led to a belief in the industry that selection to the GRNSW Board was based upon “cronyism” and “jobs for the boys”.<sup>781</sup>
- 30.34 The Minister has a wide discretion to appoint members of the Selection Panel without qualification. Nevertheless, the involvement of a former Chair in the appointment of successors gave rise to disquiet in the industry.
- 30.35 GRNSW’s submission that industry participants should not form part of the Selection Panel is curious having regard to the fact that it advocates for industry involvement in the GRNSW Board. It is also inconsistent with other submissions which it advanced. According to GRNSW, industry participants should not be involved in the Selection Panel in respect of the appointment of “independent” Board members,<sup>782</sup> but in the case of “industry representative Board members (if adopted)” GRNSW believes that this “naturally warrants some sort of industry representation on the appointment panel”.<sup>783</sup>
- 30.36 Section 7 of the Act is silent on the makeup of the Selection Panel. There is nothing in the Act which would prevent the Minister from appointing a greyhound industry participant to the Selection Panel although appointment to the Selection Panel would disqualify that person from membership of GRICG. A person is not eligible to be a member of GRICG if the person is a member of the Selection Panel.<sup>784</sup> The important point is that the Minister has a wide discretion and its exercise can accommodate industry participation in the Selection Panel if, from time to time, the Minister thought that it was desirable. However, the Commission thinks, on balance, that the preferable course would be to exclude past and present GRNSW Board members and staff members from appointment to the Selection Panel. Doing so may possibly result in the loss of some industry information and expertise but ought to put an end to any further suggestions of ‘cronyism’. Excluding past and present GRNSW Board members and staff becomes even more important if such persons are eligible for Board membership. It is not only of some importance, it is of fundamental importance that the general public and industry participants have full confidence in the integrity and competence of the Selection Panel as well as in the members of the GRNSW Board. The composition of the Selection Panel is an important element in securing that confidence.
- 30.37 GRNSW also submitted that, if there are to be industry representative Board members, they must be selected on the basis of merit and suitability rather than the number of votes which may demonstrate popularity but throw little light on competitiveness for the role.<sup>785</sup> As the Commission understands GRNSW’s submission, it is not suggesting that industry representative Board members obtain appointment through nomination by the industry but rather that they should be selected by the Selection Panel. If so, the Selection Panel will not be judging suitability for appointment by reference to any votes but by reference to merit, with merit to be determined on the basis of a candidate’s abilities, qualifications, experience and personal qualities that are relevant to the performance of the duties of membership of GRNSW.<sup>786</sup>

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<sup>781</sup> Select Committee, report “Greyhound Racing in New South Wales – First Report” (March 2014) (“Select Committee First Report”), [5.11].

<sup>782</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [164].

<sup>783</sup> *Ibid*, [165].

<sup>784</sup> The Act s. 34(1)(a).

<sup>785</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [165].

<sup>786</sup> The Act s. 7(5).

- 30.38 GRNSW submitted that the selection criteria set out in the Act is not sufficient to ensure the appointment of high quality Board members. More particularly, that the word “relevant” in s. 7(5) of the Act is too broad and essentially permits the Selection Panel to recommend any person with business, finance, law, marketing, technology, commerce or regulatory experience on the basis that having that experience is relevant to performing GRNSW’s duties.<sup>787</sup> The Commission does not agree with this interpretation. Sub-section 7(5) refers to qualities that “...are relevant to the performance of the duties of membership of GRNSW”. This necessarily means that relevance will be determined by reference to the actual duties which a Board member will be required to perform, rather than some abstraction based upon their qualifications and prior experience. In those circumstances, the Commission does not accept the submission made by GRNSW that the type of corporate expertise, abilities and qualities which are “relevant” need to be clearly defined.<sup>788</sup>
- 30.39 GRNSW also suggested that certain minimum entry level requirements be specified.<sup>789</sup> They would include the requirement for a Board member to maintain membership of the Australian Institute of Company Directors or equivalent and, having completed formal training, meeting their responsibilities as a Director, together with satisfying Continuing Professional Development requirements. The Commission agrees that these qualities are essential. Modern corporate governance requires no less.
- 30.40 GRNSW submitted that the Act needs to specify how Board member appointments can be withdrawn or revoked, as the Act is silent on the issue.<sup>790</sup> The Act is not silent. However, it is deficient. Schedule 1 cl. 5(2) of the Act provides that the Minister may, on the recommendation of GRNSW, remove a member from office for incapacity, misbehaviour or a contravention of GRNSW’s Board Code of Conduct (“the Board Code”). Independence from Government can only go so far and the power to remove a member should not depend upon a recommendation from GRNSW. The Minister must have the power to remove the Board or its members on his or her own motion. Further, the preservation of the sport’s integrity may require the Minister to act quickly and without the need to articulate detailed or comprehensive reasons. The live baiting exposed by the ABC’s *Four Corners* program is a case in point. The program went to air on 16 February 2015 and the Board had departed by 19 February 2015. However, the members resigned and were not removed. It is not clear why this was so, but there may have been concerns that the Minister had no express power to remove the Board, or its members, absent a recommendation from the Board. There should be no such uncertainty. The Commission recommends that consideration be given to amending the Act so as to provide for an express power, vested in the Minister, to remove the Board or any of its members. There is no need to provide extensive criteria. It would be sufficient to specify that the power can be exercised if the Minister no longer has confidence in the Board or any member for any reason.

## Industry representation

- 30.41 The current GRNSW Board structure and selection process were potentially interim measures.
- 30.42 Section 8 of the Act imposed upon the Minister an obligation to review the appointments process to determine whether their policy objectives remained valid and whether their terms remained appropriate for securing those objectives. The review was to be undertaken before the beginning of February 2012 and a report on the outcome was to be tabled in each House of

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<sup>787</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [171].

<sup>788</sup> *Ibid*, [172].

<sup>789</sup> *Ibid*.

<sup>790</sup> *Ibid*, [166].

Parliament within 12 months following completion of the review. The review was a specific purpose review additional to the five year reviews required by s. 48.

- 30.43 The NSW Office of Liquor, Gaming & Racing (“OLGR”) commenced a review in 2011 (“the OLGR Review”) and prepared a report in November 2013 (“the OLGR Report”) which was tabled in the Legislative Assembly on 27 March 2014.<sup>791</sup> The OLGR Review concerned the appointments process under both the Act and the HRA – the appointment process being the same under both Acts.
- 30.44 During the course of its review, OLGR received submissions from greyhound racing stakeholders. An issue of concern raised in some submissions was the eligibility restrictions for appointment to the GRNSW Board. A number requested the “deletion” or “easing” of these restrictions, contending that impressive business résumés (and well intentioned independent experts) do not necessarily result in superior performance and that industry knowledge and experience was essential. Similar submissions were made in relation to the skills criteria, namely, that it should be expanded to include industry knowledge as part of the selection process. These sentiments were also reflected in a number of submissions made to the Commission.
- 30.45 The OLGR Report noted that contemporary best practice governance principles provide that an independent Board model delivers better outcomes than an industry representative model. The independent model had been recognised by the business community and, in particular, by professional sports administrations focusing on the best outcomes for club-based sport. The OLGR Review concluded that the objective of introducing best practice corporate governance by way of an independent Board structure would be diminished if it was not accompanied by an appointment process which:
- involved merit selection in accordance with prescribed skills criteria;
  - was transparent in its application and enjoyed public confidence;
  - underpinned confidence in future leadership; and
  - ensured that governance decisions were made in the public interest and the interests of the overall greyhound racing code.<sup>792</sup>
- 30.46 The OLGR Report noted that it was a common criticism of alternative governance models involving industry nominees that the nominee acted in the narrow interest of the nominating body as opposed to the wider industry interest. This was so even where there was an express statutory duty that Board members act in the public interest and in the interests of the industry as a whole.<sup>793</sup>
- 30.47 The OLGR Review found that the core issue (across all three racing codes) was that “eligibility” and “conflict of interest” provisions required strengthening to ensure that self-interest was, and was seen to be, eliminated and that Board decisions were made in the best interests of the whole of the industry and in the public interest. It concluded that the policy objectives of the two Acts in respect of the appointments processes remained valid and that – with enhancements – the terms of the legislation were appropriate for securing these objectives.
- 30.48 The enhancements that the OLGR Report recommended involved strengthening the eligibility and disclosure of interest requirements. The Selection Panel should not recommend a person for

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<sup>791</sup> NSW Office of Liquor, Gaming and Racing, report “Appointments Process Review: Greyhound Racing NSW – *Greyhound Racing Act 2009*; *Harness Racing NSW – Harness Racing Act 2009*” (November 2013) (“the OLGR Report”).

<sup>792</sup> OLGR Report, p. 8.

<sup>793</sup> *Ibid.*

appointment who had a relevant pecuniary conflict of interest. Further, Selection Panel members should not participate in the making of decisions in which they had a pecuniary conflict of interest; and the Minister should remove them if they did so. Persons who were currently, or during the past 12 months had been, either an employee or member of a governing body of a race club, racing association, or eligible industry body were not eligible for Board nomination or appointment. These recommendations were based upon a consideration of the *Thoroughbred Racing Amendment Act 2011 (NSW)*, which had made like amendments to the TRA. The Act does not currently impose a 12 month moratorium on appointments of employees of a greyhound racing club, or a member of the governing body of a greyhound racing club or eligible industry body. It should do so. As matters currently stand, an industry participant becomes eligible for appointment as soon as participation in the industry ceases.

30.49 Around the same time as the OLGR Review, the NSW Legislative Council resolved to establish the Select Committee. This occurred on 27 August 2013 and it published its First Report in March 2014 (“Select Committee First Report”). During the course of the inquiry, the Select Committee also examined the appointment process and eligibility criteria under the Act.

30.50 GRNSW advanced a number of submissions to the Select Committee in support of maintaining the status quo in relation to the appointment process and eligibility criteria. It submitted that:

The move to an independent board structure was recognition from the NSW Government of the need to recruit persons with high-level business and management skills thus ensuring GRNSW was equipped to operate in a modern business environment. An independent board structure also nullifies the perceived conflict of interests inherent in the previous representative board model.

The independent board model is recognised as best practice across the racing industry as it provides the opportunity to develop whole of industry strategy and policy without overbearing influence of internal facets of the industry.

For greyhound racing, the independent board model has allowed for dealings and decisions to be made at arm’s length to the industry, ensuring that strategy and policy has been developed for the betterment of the industry.<sup>794</sup>

30.51 On 13 February 2015, GRNSW made the same submission to the Five Year Statutory Review.<sup>795</sup>

30.52 The Select Committee also received submissions from industry participants. A number argued that the industry should be represented on the GRNSW Board as well as having independent members. The Select Committee agreed.<sup>796</sup> It recommended that Government review the selection process of the Board members and consider adding two members with these additional positions to be elected by licensed greyhound industry participants.<sup>797</sup>

30.53 The Government considered this recommendation in its response to the Select Committee First Report, published in September 2014 (“the Government Response to Select Committee First Report”).<sup>798</sup> The recommendation was supported in principle. The Government Response to Select Committee First Report noted the OLGR Review and the fact that the shift to an independent Board model in 2009 was considered best practice at that time. It acknowledged, nevertheless, that there was a diversity of opinion among greyhound racing industry stakeholders regarding the merits of the independent Board model with some support for the inclusion of stakeholder and/or race club nominees on the Board. As the next step, Government proposed that the Five Year Statutory Review would commence with the release of a Discussion

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<sup>794</sup> GRNSW, Submission 382 to the Select Committee dated 6 November 2013, p. 25.

<sup>795</sup> GRNSW, Submission 16 to the Five Year Statutory Review dated 13 February 2015.

<sup>796</sup> Select Committee First Report, [5.99].

<sup>797</sup> Ibid, Recommendation 2, p. 68.

<sup>798</sup> NSW Government, “Government Response to the ‘Select Committee on Greyhound Racing in NSW First Report’” (September 2014).

Paper that would form the basis for submissions and for consultation with stakeholders. It was also noted that the work of the Five Year Statutory Review would assist in informing consideration of aligning the appointment processes of Racing NSW, HRNSW and GRNSW as recommended in the thoroughbred legislation review. By the time of the Government Response to Select Committee First Report, there had been a Five Year Statutory Review of the *Thoroughbred Racing Act 1996* (“the Thoroughbred Act Review”), the report of which was tabled in Parliament on 6 August 2014 (“the Thoroughbred Act Review Report”).<sup>799</sup>

30.54 In the course of the Thoroughbred Act Review, submissions were made to the effect that the Board of Racing NSW should involve a mix of “experienced industry representatives” and independent directors.<sup>800</sup> The Thoroughbred Act Review did not support a change from independent membership of the Board. It put forward a number of reasons for this, which included:

- Racing NSW had a broader range of responsibilities than simply looking after sectional interests within the racing industry. Although those interests might be very important for the well-being of the thoroughbred industry one of Racing NSW’s primary roles was to:

... initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the horse racing industry in the State and the protection of the public interest as it relates to the horse racing industry.<sup>801</sup>

- Members of Racing NSW were under a statutory duty which might mean that on occasions the interests of sections of the racing industry would play a subservient role to the best interests of the overall industry and the public interest. The statutory duty was expressed in the following terms:

It is the duty of each appointed member of Racing NSW to act in the public interest and in the interests of the horse racing industry as a whole in NSW.<sup>802</sup>

- Racing NSW’s role as racing industry regulator meant that there needed to be clear delineation between the regulator and the industry it regulated. Not only could it not be beholden to the industry that it was required to regulate it could not *appear* to be beholden to it.

30.55 In May 2015, OLGR issued a report of the Five Year Statutory Review (“the Five Year Statutory Review Report”).<sup>803</sup> The Five Year Statutory Review had also received submissions concerning the make-up of the GRNSW Board and the appointment process; however, the Commission was established prior to the completion of the work of the Five Year Statutory Review. The Five Year Statutory Review Report therefore noted that, as a consequence of the establishment of the Commission, it was considered appropriate that no recommendations should be made and that the review should instead defer to the Commission’s inquiry.

30.56 The Commission also received a number of submissions suggesting that the make-up of the Board should include participants in the industry. Some suggested that they should be nominated by industry. Many were substantially in the same terms as those advanced to the Select Committee. The Commission has considered these submissions, together with those made to the Five Year Statutory Review.

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<sup>799</sup> Michael Foggo, report “Five Year Statutory Review of the *Thoroughbred Racing Act 1996* and Three Year Statutory Review of the *Australian Jockey and Sydney Turf Clubs Merger Act 2010* (“the Thoroughbred Act Review Report”).

<sup>800</sup> Thoroughbred Act Review Report, p. 24.

<sup>801</sup> *Thoroughbred Racing Act 1996* (NSW) s. 13(1)(c).

<sup>802</sup> *Thoroughbred Racing Act 1996* (NSW) s. 11.

<sup>803</sup> NSW Government, report “Five Year Statutory Review of the *Greyhound Racing Act 2009: Review Report*” (May 2015).

- 30.57 The submissions that GRNSW advanced to the Commission were, in significant respects, contrary to those put to the Select Committee and to the Five Year Statutory Review. Having noted that greyhound industry representative bodies were highly critical of the current Board model (arguing that independent Board members do not understand the issues that are prevalent in the industry, are unable to connect with the “grass roots level of industry” and have failed to adequately consult with industry), GRNSW claimed that it:
- ... now believes that the ideal Board composition should include a combination of independent members and industry representatives. Adopting a hybrid model would naturally facilitate stronger consultation and communication with the industry while continuing to ensure the Board possesses high-level business and management skills.<sup>804</sup>
- 30.58 On no view of the evidence were the many failings of GRNSW identified by the Commission the product of a lack of involvement of industry participants at the Board level or a lack of consultation and communication between the Board and industry. They were largely the product of industry culture, poor regulation, dysfunctional management, and prioritising commercial imperatives at the expense of animal welfare.
- 30.59 The submissions advanced by GRNSW in support of its “hybrid model” suggest that it may be little more than a model intended to appease the criticisms levelled against it by industry over many years.
- 30.60 GRNSW further submitted that the Act should be amended to facilitate the addition of two industry representative Board members “to recognise the value of industry experience”.<sup>805</sup>
- 30.61 The Commission has already noted the concerns expressed in the OLGR Review that governance models involving industry nominees gives rise to perceptions that the nominee will act in the interest of the nominating group as opposed to the wider public interest. That remains the case if an industry participant were to be selected by the Selection Panel rather than nominated by the industry. An appointee selected on the basis of industry knowledge and experience will likely have memberships or affiliations which may seem to be influencing his or her actions.
- 30.62 It is relevant too, as was noted in the OLGR Review, that when the Minister established a Selection Panel for Racing NSW in October 2011, a number of candidates had experience or an interest in the thoroughbred racing industry. It resulted in the appointment of persons with considerable racing industry knowledge in addition to the skills based criteria provided for in the legislation.
- 30.63 There is no reason why persons interested in greyhound racing or who have participated in the industry in the past cannot be eligible for appointment to the GRNSW Board *provided* that they meet the skills-based criteria. The Commission considers that the appointment of industry participants based upon their participation in or knowledge of the greyhound industry alone is inconsistent with contemporary best practice governance. Contemporary best practice governance will be very important in any endeavour to restore public confidence in the industry, which is pitifully low. For this reason too, the Commission rejects GRNSW’s suggestion that if industry representatives are to be appointed to the Board then it should be through “a merit selection process with weighted criteria so that the industry participants selected are capable of effective representation”.<sup>806</sup>
- 30.64 The reasons advanced by the Thoroughbred Act Review Report for not supporting industry participants on the Board are equally applicable to greyhound racing. They are compelling. Like

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<sup>804</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [156].

<sup>805</sup> *Ibid*, [157].

<sup>806</sup> *Ibid*.

Racing NSW, GRNSW has a wider range of responsibilities than accommodating the wishes of industry participants. It too has a primary role of initiating, developing and implementing policies considered conducive to the promotion, strategic development and welfare of the greyhound racing industry in this State.<sup>807</sup> Like members of Racing NSW, members of GRNSW have a duty to act in the public interest and in the interests of the greyhound racing industry as a whole in this State.<sup>808</sup> A good example of the tension which can arise between the wishes of industry participants and acting in the public interest was the interim policy that rabbit carcasses (as distinct from professionally tanned skins) could no longer be used as lures and the final policy announced on 2 November 2015, effective 1 December 2015, that all lures used in training, education, trialling or racing had to be of artificial materials only. The Commission heard evidence and received materials suggesting that there was industry resistance to both the interim and final policy. Indeed, GRNSW's Interim Chief Executive, Mr Paul Newson, gave evidence that even after the *Four Corners* program there was industry resistance to the abandonment of live baiting as a training method.<sup>809</sup>

- 30.65 If the Commission's recommendation that the commercial and regulatory functions of GRNSW be separated is not accepted by Government, then it will nevertheless remain the case that, like Racing NSW, GRNSW's continuing role as regulator will mean that there must be a clear delineation between its role and actions as the regulator and the industry participants which it regulates.
- 30.66 The Commission recommends that industry participants should not be appointed to the GRNSW Board. The existing provisions making such participants ineligible for appointment should remain.

## Industry consultation

- 30.67 A number of submissions made to the Commission expressed concern over a lack of consultation between GRNSW and industry. Similar submissions were made to the Select Committee and to the Five Year Statutory Review. The Select Committee recommended that the Board and management of GRNSW increase their commitment to effective consultation with the greyhound racing industry and meet with industry stakeholders in both regional and metropolitan areas on a regular basis.<sup>810</sup>
- 30.68 Government supported this recommendation. It noted that GRNSW had informed the Minister that a key component of its new Strategic Plan was the requirement for Board members and senior management to stage scheduled, regular and effective consultation with industry stakeholders across the State. In addition, GRNSW had undertaken to maintain regular consultation with industry stakeholders on specific policy and operational matters as and when they arise. GRNSW contended that these measures would improve the efficacy of its consultation program by providing a formal and transparent consultation schedule. This would enable stakeholders to contribute to key policy and strategy issues. Government also noted the fact that the Act required GRNSW to undertake formal consultation on a regular basis with GRICG and other greyhound racing industry stakeholders in connection with the initiation, development and implementation of policies for the promotion, strategic development and welfare of the greyhound racing industry. The legislation also required that GRNSW consult with GRICG and other industry stakeholders in the preparation of its strategic plan.

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<sup>807</sup> The Act s. 9(2)(c).

<sup>808</sup> The Act Sch. 1 cl. 12.

<sup>809</sup> 2 October 2015: T404.12-18.

<sup>810</sup> Select Committee First Report, Recommendation 3, p. 69.

- 30.69 To implement the Select Committee’s recommendation, Government determined that the effectiveness of the consultation requirement provisions in the Act would be considered during the Five Year Statutory Review, and that the implementation of GRNSW’s proposed program of scheduled consultations would be monitored with GRNSW to provide a report to Government in 12 months.
- 30.70 As noted in Chapter 29, GRNSW put forward what it described as a “hybrid model” on the basis that it would facilitate stronger consultation and communication with the industry. The Commission does not agree.
- 30.71 The Commission considers that there are other ways to ensure stronger consultation and communication which do not compromise the integrity of the GRNSW Board or modern principles of corporate governance. First, improved communication between senior management and stakeholders. Second, GRNSW adhering to its statutory obligation to consult with GRICG.

## Improved consultation between senior management and stakeholders

- 30.72 The evidence and material received by the Commission suggest that Mr Newson has been deeply committed to engaging with industry participants across the State and has regularly done so.
- 30.73 In its submission to the Commission, GRNSW made it clear that its stakeholder engagement has improved significantly since February 2015.
- 30.74 Since February 2015, GRNSW has regularly consulted with industry stakeholders on specific policy and operational issues including changes to the Rules. It regularly communicates decisions via the newly developed Stakeholder Section of its website.<sup>811</sup>
- 30.75 From March to May 2015, Mr Newson scheduled nine industry forums around NSW to update stakeholders on GRNSW’s immediate response to integrity and welfare failures and its reform agenda.<sup>812</sup> The Commission understands that, since May 2015, there have been further forums.
- 30.76 Other actions taken by GRNSW to improve its consultation and communication with stakeholders included creating a dedicated Policy Section to establish and foster consultative relationships with stakeholders, developing formal communication strategies in respect of significant policy changes, issuing monthly Chief Executive updates to industry via the website and email, issuing Electronic Direct Mail to key stakeholders including GRICG and GBOTA, and creating a new Stakeholder Engagement Section on its website.<sup>813</sup>
- 30.77 The Commission accepts that GRNSW’s communication with stakeholders has improved greatly and that there are further ongoing improvements which have been initiated since the Commission received its submission in late August 2015. Two examples are the new GRNSW website,<sup>814</sup> and the website for the “Embracing Change” campaign, both of which seem to be designed to facilitate improved communication and awareness of current industry issues.<sup>815</sup>

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<sup>811</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [252].

<sup>812</sup> Ibid, [253].

<sup>813</sup> Ibid, [254].

<sup>814</sup> GRNSW launched a new website in March 2016 <<http://www.grnsw.com.au>>.

<sup>815</sup> GRNSW launched a campaign and website “Greyhound Racing. Embracing Change” in September 2015 <<http://www.embracingchange.com.au/>>.

## Adherence to the statutory requirement to consult

- 30.78 Part 5 of the Act concerns the establishment of the Committee known as GRICG.
- 30.79 Section 33(1) of the Act provides that GRICG must consist of the following members:
- (a) one person nominated by GBOTA;
  - (b) one person nominated by the clubs funded by GRNSW as TAB clubs;
  - (c) one person nominated by the clubs funded by GRNSW as country clubs; and
  - (d) no more than three persons, each to be nominated by a different eligible industry body.<sup>816</sup>
- 30.80 GRICG's membership was designed to represent a cross section of major industry stakeholders to facilitate and enhance robust consultation between GRNSW and industry stakeholders.<sup>817</sup>
- 30.81 The functions of GRICG are set out in s. 35 of the Act. Those functions are consulting with and making recommendations to GRNSW on matters concerning greyhound racing in the State.<sup>818</sup>
- 30.82 Recommendations made by GRICG to GRNSW must be in writing and must be tabled at the next meeting of GRNSW or presented in person at that meeting by the Chairperson of GRICG.<sup>819</sup>
- 30.83 GRNSW is required to respond to GRICG in writing in relation to any recommendations within a reasonable time after they are received. If GRNSW does not support a recommendation, then its response must include reasons.<sup>820</sup>
- 30.84 The Chairperson of GRICG must provide a report on the work and activities of GRICG for inclusion in the GRNSW Annual Report.<sup>821</sup>
- 30.85 Pursuant to s. 12(2) of the Act, GRNSW is required to undertake formal consultation on a regular basis with GRICG and other greyhound racing industry stakeholders in connection with the initiation, development and implementation of policies for the promotion, strategic development and welfare of the greyhound racing industry.
- 30.86 GRNSW is required to prepare strategic plans for its activities from time to time.<sup>822</sup> That must occur at least every three years. Such strategic plans must be prepared in consultation with GRICG and other industry stakeholders.<sup>823</sup> Progress on the implementation of the strategic plan must be reported in the annual report of GRNSW.<sup>824</sup>
- 30.87 GRICG must meet not less than six times a year with at least one or more members of GRNSW, at least one of whom is the Chairperson or Chief Executive Officer of GRNSW.<sup>825</sup> Membership of GRICG is honorary, although members are entitled to be reimbursed for reasonable expenses

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<sup>816</sup> Eligible industry bodies are GBOTA, RGPA and Bookmaker's Co-operatives.

<sup>817</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 2 April 2009, 14430 (Kevin Greene).

<sup>818</sup> The Act s. 35(1).

<sup>819</sup> The Act s. 35(2).

<sup>820</sup> The Act s. 35(3).

<sup>821</sup> The Act s. 35(4).

<sup>822</sup> The Act s. 12(1).

<sup>823</sup> The Act s. 12(3).

<sup>824</sup> The Act s. 12(4).

<sup>825</sup> The Act Sch. 2 cl. 6.

incurred in attending meetings of GRICG.<sup>826</sup> GRNSW is required to provide such reasonable administrative support as may be required to enable GRICG to exercise its functions.<sup>827</sup>

- 30.88 There have been concerns expressed by industry for a number of years that GRICG has not achieved what it was designed to achieve, namely, to have input into the development and implementation of policy and strategic development of the sport. It was suggested to the Select Committee that, as members undertook their role voluntarily, GRICG operated on a well-meaning basis but was potentially under resourced given its function. It was also put that GRICG's role, as distinct from its envisaged role, had been limited to proposing recommendations rather than being a major consultation point, as GRNSW developed strategy and made determinations.<sup>828</sup>
- 30.89 Similar submissions were made to the Commission. GBOTA noted that the Act envisaged a proactive and strategic input to GRNSW decision making by GRICG and that GRNSW was obliged to liaise and work with GRICG on major decisions and strategic direction. Instead, GRNSW appears to have treated GRICG as a low-level advisory body. GBOTA contended that GRICG was under resourced and provided with information seemingly only when requested.<sup>829</sup>
- 30.90 GRNSW did not dispute that consultation with GRICG was not what it should have been. The Commission accepts that GBOTA's description of the relationship is likely to be accurate. At all times a representative of GBOTA was a member of GRICG.
- 30.91 GRNSW raised a number of concerns in relation to GRICG.
- 30.92 First, it submitted that whilst it recognised the merits of industry consultation, and the need to enhance engagement across its diverse stakeholders, it was not satisfied that GRICG is an effective or appropriate mechanism to support improved consultation "or the necessary industry reform agenda".<sup>830</sup> Although GRNSW did not articulate why this is so, the submission may have been motivated by a perception that GRICG's views and GRNSW's views on the industry and reform do not align. It said, without identifying the source, that:
- ... concerns have been raised in relation to the capacity of GRICG to effectively analyse strategic issues, meaningfully contribute with informed and reasoned positions and advocate in the interests of the sport.<sup>831</sup>
- 30.93 There is an industry consultation group across each of the three racing codes. Parliament clearly intended that it was desirable that there be a formal mechanism through which industry participants could have a voice in racing. In circumstances where there has been inadequate consultation by GRNSW with GRICG to date, it is premature to suggest a lack of capacity on the part of GRICG to analyse strategic matters and contribute in a meaningful way. As has already been acknowledged, the submissions made by GBOTA to the Commission were well considered and the Commission derived much assistance from them. The submissions demonstrated that GBOTA is well aware of the issues, including strategic issues, facing the industry. A GBOTA nominee has at all times been a member of GRICG. The Commission is confident that, if proper consultation takes place, then the members of GRICG would be capable of providing constructive input. That may mean that from time to time GRNSW is required to provide additional resources to ensure that this can occur. By way of example, where GRNSW presents,

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<sup>826</sup> The Act Sch. 2 cl. 1.

<sup>827</sup> The Act Sch. 2 cl. 7.

<sup>828</sup> Select Committee First Report, [5.55]-[5.57].

<sup>829</sup> GBOTA, Submission 664 to the Commission dated 5 July 2015, [37].

<sup>830</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [263].

<sup>831</sup> *Ibid*, [261].

as part of any proposed strategic plan, complicated financial information, it may be necessary to provide expert assistance to GRICG so that its content can be fully understood.

30.94 Second, GRNSW pointed to its submission to the Five Year Statutory Review suggesting that the composition of GRICG be updated to “alleviate the perception of a lack of shareholder influence”.<sup>832</sup> It suggested that GRICG be comprised of the following:

- one country club representative;
- one trainer representative;
- one breeder representative;
- one wagering representative; and
- one metropolitan club representative.<sup>833</sup>

30.95 It is not readily apparent how the proposed changes would make a great deal of difference to perceptions concerning “shareholder influence” or improve the quality of GRICG’s contribution to strategic development. GRICG already has a country club nominee, a TAB club nominee, and at least the capacity to have a wagering representative, namely, a nominee of the Bookmaker’s Co-operative. It is also likely that more than one nominee on GRICG as currently constituted will always be a trainer, a breeder or both. In any event, in providing for a nominee of GBOTA and possibly the Registered Greyhounds Participants Association (as an eligible industry body), Government intended to secure the voice of those who represented significant numbers of industry participants rather than, for example, a single breeder representative or a single trainer representative.

30.96 The real concern is that GRNSW appears not to have done what the statute required it to do, namely, engage in a proper consultative process with GRICG and others. That may be the product of the fact that, after developing its first Strategic Plan in 2010,<sup>834</sup> it did not develop another one. Consultation with industry should not only be through the informal methods currently at the forefront of GRNSW’s approach. It should also include consultation in accordance with its statutory obligations.

30.97 An alleged lack of consultation between Racing NSW and the Racing Industry Consultation Group (“RICG”) arose during the Thoroughbred Act Review. As has been noted, the Thoroughbred Act Review Report was tabled in Parliament on 6 August 2014. The Thoroughbred Act Review Report did not recommend any changes to the legislation or the role of RICG.<sup>835</sup> It did, however, recommend that Racing NSW review its consultation policies, particularly in relation to the development of the industry strategic plan to ensure that there was appropriate consultation with all stakeholders within the thoroughbred racing industry.

30.98 The Commission similarly recommends that GRNSW review its consultation policies, particularly in relation to the development of industry strategic plans, to ensure that appropriate consultation takes place with all stakeholders within the greyhound racing industry including GRICG. As was noted in the Thoroughbred Act Review Report, “[s]ound and proper consultation is the very essence of good governance.”<sup>836</sup>

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<sup>832</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [262]

<sup>833</sup> *Ibid.*

<sup>834</sup> Chasing 2020: Ex FFF (17-18 February 2016).

<sup>835</sup> There was, however, a recommendation that consideration be given to making the NSW Bookmakers Co-operative Limited an eligible body as it is under the Act.

<sup>836</sup> The “Brown Report”, cited by the Thoroughbred Act Review Report, p. 39.

## Funding of the regulator

- 30.99 GRIC must be properly resourced to carry out its work. This is fundamental if the industry is to continue.
- 30.100 The means by which GRIC would establish its financial requirements each year is likely to be uncontroversial. A procedure was set out in s. 38 of the *Greyhound and Harness Racing Administration Act 2004* (NSW). The former Greyhound and Harness Racing Regulatory Authority (“GHRRA”) was required to submit a draft annual budget to the Minister before the beginning of each financial year, at a time and in a form directed by the Minister.<sup>837</sup> The Minister was then required to determine the amount of funding to be allowed for the funding of the GHRRA for the year concerned and, by notice, require it to be paid.<sup>838</sup>
- 30.101 The Commission considers that this simple procedure, or a procedure which approximates it, should be adopted. If the industry is to continue then it is critical that the yearly funding of the regulator not be based upon what GRNSW claims it can or cannot afford. If there is a discrepancy between what GRNSW can *in fact* pay and what the regulator requires, then it will be necessary for government to provide funding. That funding should not be set as a consequence of ‘horse-trading’ or compromises. The integrity of the greyhound racing industry will not be served by an under resourced and ineffective regulator.

## Recommendations

66. The NSW Greyhound Racing Integrity Commission should be required to report to the NSW Minister for Racing annually. Apart from including audited financial statements the report must contain comprehensive details of its operations including disciplinary action taken by it for breach of the Rules of Racing, drug testing results, and the investigation and outcome of breaches of animal welfare standards including prosecutions conducted by RSPCA NSW, the Animal Welfare League and the NSW Police Force. The report should specify any steps taken by the Greyhound Racing Integrity Commissioner in the year to which the report relates to maintain appropriate welfare standards and enhance them, including through the education of industry participants.
67. The NSW Greyhound Racing Integrity Commissioner’s annual report should contain audited figures of registrations and licences, litters whelped, lifecycle outcomes for greyhounds from whelping to the lodgement of R 106 Forms, significant track injuries (being those where there has been a stand down period of 21 days or more or the greyhound has been euthanased), and rehoming figures whether through an industry program such as the GAP Program or otherwise. If a breeding quota or some other breeding management system is introduced then the NSW Greyhound Racing Integrity Commission must administer it and report on its outcomes each year. The annual report should be made available online and free of charge to members of the public.
68. Persons who have at any time been involved as participants in the greyhound racing industry must be ineligible for appointment either as the NSW Greyhound Racing Integrity Commissioner or to the Board of the NSW Greyhound Racing Commission.
69. An Animal Welfare Committee should be established. It should comprise three members. One member should be an existing member of the NSW Animal Welfare Advisory Council with

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<sup>837</sup> *Greyhound and Harness Racing Administration Act 2004* (NSW) s. 38(1). It was required to specify the proportions attributable to harness racing and greyhound racing respectively. That is no longer relevant.

<sup>838</sup> *Greyhound and Harness Racing Administration Act 2004* (NSW) s. 38(3), s 38(4). There were requirements to allocate funding contributions between greyhound racing and harness racing.

appropriate experience in animal ethics. One member should be a senior officer of RSPCA NSW or the Animal Welfare League nominated by the Board of those organisations or, in the event that they do not wish to participate, a person with extensive animal welfare experience at a senior level. The third member should be an independent veterinary practitioner.

70. The Board and the Chief Executive Officer of the NSW Greyhound Racing Integrity Commission should be required to seek advice from the Animal Welfare Committee in relation to all significant matters concerning the welfare of greyhounds including the formulation of appropriate welfare policies and standards. The Board and the Animal Welfare Committee should be required to meet quarterly.
71. The amendments to the *Greyhound Racing Act 2009* (NSW) that create the NSW Greyhound Racing Integrity Commissioner should specify the following objects referable to the NSW Greyhound Racing Integrity Commission's operations:
  - (a) the control, regulation and integrity of greyhound racing in New South Wales;
  - (b) the maintenance, protection and enhancement of animal welfare and animal welfare standards in greyhound racing; and
  - (c) the maintenance of accurate, transparent and publicly accessible records including lifecycle records for each greyhound purpose bred to race.
72. The functions of the NSW Greyhound Racing Integrity Commission should include the following:
  - (a) The registration of greyhound racing clubs and trial tracks.
  - (b) The licencing and registration of industry participants such as bookmakers, breeders, pre-trainers, rearers, educators, owners and trainers. This includes making determinations whether, in the opinion of the NSW Greyhound Racing Integrity Commissioner, persons are fit and proper persons to be licenced or registered.
  - (c) The registration of greyhounds.
  - (d) The appointment and management of stewards.
  - (e) The initiation, development and implementation of policies to protect and enhance the integrity of greyhound racing.
  - (f) The development of compulsory animal welfare and compliance education and training and the delivery of such education and training.
  - (g) The amended *Greyhound Racing Act 2009* (NSW) should make it a criminal offence for any industry participant to fail to lodge a R 106 Form or to knowingly provide false or misleading information in such notification.
73. The powers of the NSW Greyhound Racing Integrity Commissioner should include:
  - (a) the power to make rules for or with respect to the control and regulation of greyhound racing in NSW. That includes the matters covered in s. 23(2) of the *Greyhound Racing Act 2009* (NSW). It should also include the power to make or adopt codes of practice which relate to greyhound welfare and embed those codes in the Greyhound Racing NSW Rules of Racing;
  - (b) the power to investigate the conduct of any racing official in respect of the exercise of functions relating to greyhound racing;

- (c) the power to cancel or suspend registration, and, in the case of greyhound racing clubs, the power to appoint an administrator in appropriate cases;
  - (d) the power to conduct own motion inquiries that do not relate to any specific complaint and may include an investigation into systemic issues in greyhound racing;
  - (e) the power to hold hearings (if considered appropriate), summon persons and receive oral evidence on oath or affirmation;
  - (f) the power to investigate and prosecute breaches of the Greyhound Racing NSW Rules of Racing by way of disciplinary action;
  - (g) the power to investigate complaints from members of the public and industry participants concerning compliance and animal welfare;
  - (h) the power to impose fines, periods of disqualification and like penalties;
  - (i) the power to develop compliance enforcement strategies; and
  - (j) the power to liaise with RSPCA NSW, the Animal Welfare League and the NSW Police Force in relation to breaches or suspected breaches of the *Prevention of Cruelty to Animals Act 1979* (NSW) and to disclose all relevant information to those bodies whether or not that information might be regarded as otherwise protected by privacy and personal information protection legislation.
74. Upon the establishment of NSW Greyhound Racing Integrity Commission, it and Greyhound Racing NSW must enter into a Memorandum of Understanding dealing with the operational relationship between the two bodies including the sharing of resources.
75. A provision similar to s. 5 of the (repealed) *Greyhound Racing Act 2002* (NSW) should be introduced into the *Greyhound Racing Act 2009* (NSW).
76. Members of the Greyhound Racing Industry Consultation Group and industry participants should not be appointed as members of Greyhound Racing NSW.
77. Past and present Board members of Greyhound Racing NSW and staff should be excluded from appointment to the Selection Panel.
78. Consideration should be given to amending the *Greyhound Racing Act 2009* (NSW) so as to provide for an express power, vested in the Minister, to remove the Board of Greyhound Racing NSW or any of its members.
79. Greyhound Racing NSW should review its consultation policies, particularly in relation to the development of industry strategic plans, to ensure that appropriate consultation takes place with all stakeholders within the greyhound racing industry including NSW Greyhound Racing Integrity Commissioner.



# 31 Future governance: the Integrity Auditor

## Introduction

- 31.1 Ensuring the integrity of the greyhound racing industry, by appropriate regulation and oversight, is a matter of fundamental importance. It is an aspect that is essential to the industry's continued existence. Without such appropriate regulation and oversight, the public will, rightly, have little or no confidence in the integrity of the industry.
- 31.2 As noted in Chapter 6, in 2009 the regulatory and commercial functions of the greyhound racing industry were amalgamated in the new Greyhound Racing New South Wales ("GRNSW") established by the *Greyhound Racing Act 2009* (NSW) ("the Act"). GRNSW was created by statute but was to operate independently of Government.
- 31.3 The establishment, under the Act, of the office of Integrity Auditor ("the Integrity Auditor") was designed to provide a means by which the integrity of the industry could be fostered in circumstances where regulatory and commercial functions were to be given to the one body, GRNSW. In the Agreement in Principle Speech for the Greyhound Racing Bill 2009 and cognate legislation, the Minister for Gaming and Racing, Mr Kevin Greene MLA, described the Integrity Auditor as "a new and important role."<sup>839</sup>
- 31.4 Pursuant to the Act, the Integrity Auditor is given primary oversight over the (integrity) functions of GRNSW that relate to stewards, drug testing and control and registration.<sup>840</sup>
- 31.5 The Integrity Auditor model adopted in the Act has operated for over six years. As will be seen, the Commission regards the Integrity Auditor model, adopted in the Act, as having significant deficiencies. It is a flawed model that does not serve adequately to ensure oversight of key regulatory functions of the industry.
- 31.6 In practice, the position of Integrity Auditor has been part-time. GRNSW – the body over which the Integrity Auditor is intended to have oversight – appoints the Integrity Auditor. GRNSW also, in effect, controls the budget of the Integrity Auditor and is thus able to impact upon the Integrity Auditor's ability to carry out his or her functions. There are also significant deficiencies in the powers conferred upon the Integrity Auditor.
- 31.7 The Integrity Auditor model must be replaced if the greyhound industry in NSW is to continue.

## The Commission's investigations

- 31.8 The Commission utilised its compulsory powers under the *Special Commissions of Inquiry Act 1983* (NSW) to obtain extensive information and documents from GRNSW and the present and former Integrity Auditors, regarding the history and operation of the position of Integrity Auditor.
- 31.9 The Commission also received and reviewed numerous submissions, including from industry participants, regarding the role of the Integrity Auditor. Many industry participants were highly critical of the office of Integrity Auditor and its perceived lack of independence from GRNSW.

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<sup>839</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 2 April 2009, 14431 (Kevin Greene).

<sup>840</sup> The Act s. 26(1)(a).

## Review of material from the Select Committee

- 31.10 In 2013 and 2014 the NSW Legislative Council’s 2014 Select Committee on Greyhound Racing in NSW (“the Select Committee”) considered particular issues relating to the greyhound racing industry.
- 31.11 The Select Committee’s Terms of Reference relevantly included consideration of “[t]he effectiveness of the current arrangements for, and role of, the Integrity Auditor of Greyhound Racing NSW.” The Select Committee received written submissions and, in November 2013 and February 2014, heard oral evidence from GRNSW officials, industry participants and other persons. The Select Committee provided a First Report dated 28 March 2014 (“the Select Committee First Report”).<sup>841</sup> In September 2014, the Government provided a response to the Select Committee’s First Report (“the Government Response to Select Committee First Report”).<sup>842</sup>
- 31.12 The Commission has had full regard to the submissions and evidence received by the Select Committee, the Select Committee First Report, and the Government Response to the Select Committee First Report. Relevant aspects of that material are considered below.

## Review of submissions to the Five Year Statutory Review

- 31.13 Pursuant to s. 49 of the Act, the NSW Office of Liquor, Gaming and Racing (“OLGR”) commenced a review of the Act in December 2014 to assess whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives (“the Five Year Statutory Review”). As part of this process, the Five Year Statutory Review issued a discussion paper and invited written submissions, including in connection with the effectiveness of the office of the Integrity Auditor. The Five Year Statutory Review issued a report in May 2015 in which it made no recommendations and deferred to the Commission.<sup>843</sup>
- 31.14 The Commission has had full regard to the written submissions made to the Five Year Statutory Review.

## The three persons to have held the office of Integrity Auditor

- 31.15 Since the introduction of the Act and the formation of GRNSW under the Act, three persons have held the office of Integrity Auditor.

### Mr John Costigan

- 31.16 Mr John Costigan held the position from September 2009 until dismissed from the position in May 2011. Mr Costigan was a former Racing NSW Board Member and is a former barrister.
- 31.17 Mr Costigan’s appointment as Integrity Auditor was for a two-year term. Mr Costigan was dismissed from his position as Integrity Auditor following a recommendation to the GRNSW Board on 3 May 2011.

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<sup>841</sup> Select Committee, report “Greyhound Racing in New South Wales – First Report” (March 2014).

<sup>842</sup> NSW Government, “Government Response to the ‘Select Committee on Greyhound Racing in NSW First Report’” (September 2014).

<sup>843</sup> NSW Government, report “Five Year Statutory Review of the *Greyhound Racing Act 2009*: Review Report” (May 2015).

## Mr David Landa

31.18 Mr David Landa held the position from 4 July 2011 until his resignation on 3 April 2012. Mr Landa was formerly the NSW Ombudsman (1988-1995) and the Chief Magistrate of the Local Court of New South Wales (1997-1999).

31.19 Mr Landa's appointment, as Integrity Auditor, was for a two-year term. On 3 April 2012 Mr Landa resigned from the position of Integrity Auditor, in circumstances described below.

## Mr Graham Gorrie

31.20 Mr Graham Gorrie has held the position of Integrity Auditor from 7 June 2012 to date. Mr Gorrie is a practising solicitor with his own legal practice. He also holds an honorary position as the Integrity Officer for the New South Wales Suburban Rugby Union.<sup>844</sup> He previously held senior managerial positions in regulatory compliance at Tab Limited and Tabcorp Holdings Ltd.<sup>845</sup> As permitted by s. 25(4) the Act, Mr Gorrie also holds the position of Harness Racing Integrity Auditor.<sup>846</sup>

31.21 Mr Gorrie's initial appointment as the Integrity Auditor was for two years. On 8 June 2014 he was re-appointed for a further two years.

## Legislative framework

31.22 Part 3 of the Act deals with "Control and regulation of greyhound racing". Division 3 of Part 3 of the Act:

- provides for the appointment of the Integrity Auditor and specifies the means of appointment;
- details the functions of the Integrity Auditor;
- describes the process of inquiry and investigation by the Integrity Auditor in respect of a complaint; and
- specifies the action to be taken by the Integrity Auditor following investigation of a complaint.

## Appointment of Integrity Auditor

31.23 Section 25(1) of the Act provides that "GRNSW is to appoint a person who, in the opinion of GRNSW, has suitable legal qualifications to hold the office of Greyhound Racing Integrity Auditor."

31.24 The requirement under s. 25(1) is mandatory. Subject to the requirements of the Act, GRNSW must appoint a person to the position of Integrity Auditor. Section 25(1) also makes clear that legal qualifications are a pre-requisite for the position. The three persons who have held the position to date have all been lawyers.

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<sup>844</sup> Mr Gorrie has also been an approved external auditor appointed by AUSTRAC under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s. 164(1).

<sup>845</sup> Select Committee Public Hearing 15 November 2013: T42.

<sup>846</sup> Both Mr Costigan and Mr Landa had also each previously held the dual roles of Greyhound Racing Integrity Auditor and Harness Racing Integrity Auditor.

- 31.25 Section 25(3) imposes a requirement of ministerial approval for a valid appointment: “An appointment of a Greyhound Racing Integrity Auditor has no effect unless the Minister approves of the appointment.”
- 31.26 Section 25(2) provides that GRNSW is to conduct a probity check – with the level of scrutiny to be determined by the Minister – of a person before appointing that person to the office of Integrity Auditor.
- 31.27 Section 25(4) makes clear that a person may hold both the office of Integrity Auditor under the Act and the office of Harness Racing Integrity Auditor under the *Harness Racing Act 2009* (NSW). Mr Gorrie, the current Greyhound Racing Integrity Auditor, also holds the office of Harness Racing Integrity Auditor. His two predecessors likewise held both offices.

## Functions of Integrity Auditor

- 31.28 Pursuant to s. 26(1) of the Act, the Integrity Auditor has the following functions:
- (a) the primary oversight of those aspects of the functions of GRNSW that relate to stewards, drug testing and control and registration,
  - (b) providing advice to GRNSW on the matters referred to in paragraph (a),
  - (c) receiving and investigating complaints against racing officials in respect of the exercise of functions relating to greyhound racing, and
  - (d) such other functions as are conferred or imposed on the Integrity Auditor by or under [the *Greyhound Racing Act 2009*] or any other Act.
- 31.29 A key function of the Integrity Auditor thus involves “primary oversight” of particular functions of GRNSW, namely those relating to stewards, drug testing and control and registration, and the provision of advice to GRNSW in respect of such matters. The Integrity Auditor is also to receive and investigate complaints against racing officials in respect of the exercise of functions relating to greyhound racing.
- 31.30 Section 26(2) provides that the functions of the Integrity Auditor are to be exercised independently of GRNSW.

## Investigations relating to a complaint

- 31.31 A key part of the work that the Integrity Auditor has undertaken to date is the investigation of complaints falling within the jurisdiction of the Integrity Auditor.<sup>847</sup> In this respect, s. 27(1) provides that a person may make a complaint to the Integrity Auditor “in respect of the exercise of functions by a racing official relating to greyhound racing.”
- 31.32 Section 27(2) provides that, on receiving a complaint under s. 27(1), the Integrity Auditor must investigate the complaint with due diligence unless the Integrity Auditor considers that the complaint:
- (a) is frivolous, vexatious or not made in good faith, or
  - (b) is trivial, or
  - (c) does not relate to the exercise of functions by a racing official in a corrupt, improper or unethical manner.
- 31.33 Section 27(2) thus provides a mechanism by which particular complaints can be filtered out.

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<sup>847</sup> The Act s. 26(1)(c).

- 31.34 In respect of complaints determined to be “within jurisdiction” (ie. to relate to the exercise of functions by a racing official relating to greyhound racing),<sup>848</sup> the general practice of the current Integrity Auditor, Mr Gorrie, has been to investigate and, in effect, determine the complaint. If Mr Gorrie finds that the complaint is not substantiated he will typically, at that stage, also indicate that a particular limb of s. 27(2) also applies such as to justify no further action being taken by him.<sup>849</sup>
- 31.35 Section 27(3) of the Act is designed to ensure procedural fairness to the racing official the subject of a complaint. Section 27(3) provides that, if the Integrity Auditor decides to investigate a complaint, the Integrity Auditor must inform the racing official concerned of the substance of the complaint and give the racing official a reasonable opportunity to respond.
- 31.36 Section 27(4) confers particular compulsory powers that the Integrity Auditor may exercise in connection with the investigation of a complaint. In particular, the Integrity Auditor may, by notice in writing, require the racing official the subject of an investigation to:
- provide information, verified by statutory declaration, which the Integrity Auditor believes is relevant to the investigation and is specified in the notice;
  - produce and permit inspection and copying of records that the Integrity Auditor believes are relevant to the investigation;
  - authorise a person described in the notice to comply with a requirement of the kind referred to in paragraphs (a) and (b) above;
  - furnish to the Integrity Auditor such authorisations and consents as the Integrity Auditor requires for the purpose of enabling the Integrity Auditor to obtain information from other persons concerning the racing official under investigation.
- 31.37 Section 27(6) provides that it is an offence for a person to fail to comply with a notice that the Integrity Auditor issues under s. 27(4).
- 31.38 As will be seen, none of the three persons to hold the office of Integrity Auditor has ever used the compulsory powers provided by s. 27(4).

### **Action after complaint substantiated**

- 31.39 Section 28 deals with action to be taken after investigation of a complaint. Section 28(1) provides that, if satisfied that there has been a contravention of the Act or any other Act in relation to the conduct of greyhound racing or a contravention of the GRNSW Code of Conduct,<sup>850</sup> the Integrity Auditor must provide a written report, on the results of the investigation, to GRNSW and the Minister for Racing.
- 31.40 The Integrity Auditor must also provide a copy of the report to the racing official concerned,<sup>851</sup> and must inform the complainant that a report has been made.<sup>852</sup>
- 31.41 Neither John Costigan nor David Landa – the first two persons to hold the office of Integrity Auditor – prepared any report to GRNSW and the Minister for Racing under s. 28(1). Mr Gorrie,

<sup>848</sup> The Act s. 26(1)(c).

<sup>849</sup> For example, that the complaint does not relate to the exercise of functions by a racing official in a corrupt, improper or unethical manner: the Act s. 27(2)(c).

<sup>850</sup> Being the code of conduct adopted by GRNSW in accordance with cl. 16 of Schedule 1 to the Act: s. 28(1).

<sup>851</sup> The Act s. 28(2).

<sup>852</sup> The Act s. 28(3).

the current Integrity Auditor, has prepared only one such report, in December 2010, in circumstances described below.<sup>853</sup>

## The nature of the position

- 31.42 Each of the three persons to hold the office of Integrity Auditor was engaged under an annual retainer and, in addition, was entitled to be paid an hourly rate, including travel time.<sup>854</sup>
- 31.43 In each case, the position of Integrity Auditor was a part-time role. Each person holding the position undertook other employment during his respective term.
- 31.44 In each case, the Integrity Auditor did not have dedicated office space provided for him, either at the premises of GRNSW or elsewhere. Rather, the person holding the position carried out his functions principally either at his own home or office.
- 31.45 The amount of work that the Integrity Auditor was required to undertake varied from month to month depending on when complaints were received and the amount of time required to investigate them.

## Type of work undertaken

- 31.46 The type and amount of work engaged in has differed between each Integrity Auditor.

### Mr Costigan

- 31.47 Mr Costigan was the first Integrity Auditor and held that position from September 2009 until May 2011.<sup>855</sup>
- 31.48 According to GRNSW, Mr Costigan did not charge for any work done on an hourly rate. He was paid only his annual retainer.<sup>856</sup> GRNSW does not identify Mr Costigan as having undertaken any matters requiring significant attention.<sup>857</sup>
- 31.49 Mr Costigan says his position was part-time and the work he undertook involved “reading letters purporting to be complaints.” Mr Costigan says he recalls receiving about 12 letters of complaint while Integrity Auditor, most anonymous, and that he formed the view that most, if not all, of the correspondence did not fall within the terms of s. 26(1)(c) of the Act – that is, it did not constitute a complaint against a racing official in respect of the exercise of functions relating to greyhound racing.<sup>858</sup>

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<sup>853</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015.

<sup>854</sup> Save as to Mr Gorrie’s renewed appointment in 2014, the annual retainer was in the order of \$20,000; the hourly rate was about \$390 (exclusive of GST). For Mr Gorrie’s re-appointment in 2014, the annual retainer was \$21,218 (to increase at the commencement date of each year by the greater of CPI or 3%), with an hourly rate of \$400 (exclusive of GST): Graham Gorrie, Response to Order 1 dated 3 June 2015, Annexure A.

<sup>855</sup> In evidence before the Select Committee, Mr Landa stated that Mr Costigan had (subsequent to holding the position of Integrity Auditor) been found guilty of professional misconduct as a legal practitioner and that, not being a fit and proper person, his name was to be removed from the roll of legal practitioners: Select Committee Public Hearing 6 February 2014: T12. See also *Council of the New South Wales Bar Association v Costigan* [2013] NSWCA 407.

<sup>856</sup> John Costigan, Response to Order 1 dated 14 July 2015.

<sup>857</sup> GRNSW, Response to Order 2 dated 15 June 2015.

<sup>858</sup> John Costigan, Response to Order 1 dated 14 July 2015.

- 31.50 Mr Costigan said there was no system in place as to how he carried out the work or interacted with GRNSW. He would, if required, speak by phone from time to time with Mr Brent Hogan, the then Chief Executive of GRNSW.<sup>859</sup>
- 31.51 During his time as Integrity Auditor, Mr Costigan did not prepare any reports in respect of primary oversight matters relating to stewards, drug testing and control, and/or registration. Nor did Mr Costigan provide any advice in respect of primary oversight matters.<sup>860</sup>
- 31.52 Mr Costigan further states that GRNSW did not refer any oversight matters to him for review.<sup>861</sup>
- 31.53 Mr Costigan did not at any time exercise any of the compulsory powers under s. 27(4) of the Act requiring a person to furnish verified information and/or documents.<sup>862</sup>
- 31.54 Mr Costigan did not prepare any written reports of investigations to GRNSW or the Minister pursuant to s. 28(1) of the Act.<sup>863</sup>
- 31.55 Mr Costigan states there was no occasion when GRNSW precluded him from exercising particular functions or undertaking a particular activity. He states, however, that at an early stage he told GRNSW that, with little or no budget, and no secretariat and staff, the position of Integrity Auditor “seemed token at best.”<sup>864</sup>

## Mr Landa

- 31.56 Mr Landa was the second Integrity Auditor and held that position for less than a year, from 4 July 2011 until his resignation on 3 April 2012.
- 31.57 Mr Landa states that the position was part-time. Mr Landa told the Commission that, on his first meeting with Mr Hogan at GRNSW’s offices, he asked for minutes of meetings and copies of prior investigations and reports relating to the office of Integrity Auditor and was told that none existed.<sup>865</sup>
- 31.58 Mr Landa states that, at an early stage, he received a number of unopened letters of complaint dated prior to his appointment.<sup>866</sup>
- 31.59 During the short period he was Integrity Auditor, Mr Landa undertook work developing a draft policy or protocol regarding the operations of the Integrity Auditor.
- 31.60 Mr Landa also investigated a complaint by a trainer against a GRNSW official in connection with what was claimed to be the unauthorised removal of a kennelled dog from a racetrack and the subsequent GRNSW inquiry conducted under LR 90 of the GRNSW Rules of Racing (“the Rules”). This was a primary oversight matter relating to stewards that GRNSW referred to Mr Landa.<sup>867</sup> On 2 August 2011, pursuant to s. 28 of the Act, Mr Landa provided a written report to GRNSW. Mr Landa found the complaint not to be substantiated, but made recommendations for a review of the procedures for securing kennels and the functions of stewards in this process.

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<sup>859</sup> Ibid.

<sup>860</sup> Ibid.

<sup>861</sup> Ibid.

<sup>862</sup> Ibid.

<sup>863</sup> Ibid.

<sup>864</sup> Ibid.

<sup>865</sup> David Landa, Response to Order 1 dated 23 November 2015.

<sup>866</sup> Ibid.

<sup>867</sup> Ibid.

- 31.61 Mr Landa reviewed a number of further complaints but considered many of them not to raise matters within the jurisdiction of the Integrity Auditor.<sup>868</sup>
- 31.62 As Integrity Auditor, Mr Landa did not exercise any of the compulsory powers under s. 27(4) of the Act.<sup>869</sup>
- 31.63 Mr Landa regarded the Act as permitting the Integrity Auditor to hold a hearing at which oral evidence is received. However, no occasion arose for him to hold such a hearing.<sup>870</sup>

#### *Difficulties encountered in engagement with GRNSW*

- 31.64 Mr Landa states that he experienced significant difficulties in negotiating a budget with GRNSW and that no agreement was ever reached.<sup>871</sup> Mr Landa regarded the continual delays by GRNSW in providing a meaningful response to the budget proposal he advanced as symptomatic of GRNSW's "determination to delay any meaningful implementation of oversight."<sup>872</sup>
- 31.65 Mr Landa also regarded GRNSW as having failed to publicise, and bring to the attention of members of the public, the existence of the Integrity Auditor.<sup>873</sup>
- 31.66 Mr Landa told the Commission that he wanted to undertake oversight activity regarding GRNSW, in respect of swabbing procedures, in circumstances other than where GRNSW had referred a particular matter to him for review or advice, but he was unable to do so.<sup>874</sup> Mr Landa prepared draft terms of reference for an inquiry, as Integrity Auditor, that he proposed to conduct into the policies and procedures of GRNSW regarding swabbing at TAB and non-TAB racecourses and the conduct of stewards and other GRNSW officials pursuant to such policies and procedures.<sup>875</sup> As part of the inquiry, Mr Landa contemplated that he would seek direct input, by way of written submissions, from industry participants, and would then determine whether or not to hold public hearings and allow for further submissions.
- 31.67 Mr Landa states that GRNSW did not support him undertaking such activity, and the Act left him powerless to enforce such initiative. He also states that he proposed "audits" of particular GRNSW functions, but GRNSW refused to fund such oversight.<sup>876</sup>

#### *Limitations of the legislation*

- 31.68 Mr Landa states that, from the outset, he had significant concerns that there were impediments to the independence of the position of Integrity Auditor, arising from the nature of the legislation, and which "left the Integrity Auditor powerless." Mr Landa told the Commission that "the Act made GRNSW self-regulating and the position of Integrity Auditor was operating only at the behest of GRNSW."<sup>877</sup>
- 31.69 To similar effect, there were, in Mr Landa's view, no resources to enable effective oversight.<sup>878</sup>
- 31.70 Mr Landa expressed to the Commission strong dissatisfaction with his interactions with GRNSW. Save for the investigation the subject of the s. 28 report referred to above (at [31.41]), Mr Landa regarded GRNSW as having "vigorously obstructed" every other initiative he had. According to

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<sup>868</sup> Ibid.

<sup>869</sup> Ibid.

<sup>870</sup> Ibid.

<sup>871</sup> Ibid.

<sup>872</sup> Robert Gaussen, Response to Order 1 dated 3 December 2015, p. 4

<sup>873</sup> David Landa, Response to Order 1 dated 23 November 2015.

<sup>874</sup> Ibid.

<sup>875</sup> David Landa, Response to Order 1 dated 23 November 2015.

<sup>876</sup> Robert Gaussen, Response to Order 1 dated 3 December 2015.

<sup>877</sup> Ibid.

<sup>878</sup> Ibid.

Mr Landa, this led to his resignation as Integrity Auditor. Mr Landa told the Commission: “I considered at the time of my resignation that the Integrity Auditor had no power to act independently.” He further said that, given the absence of power to act independently, if he had continued in the role of Integrity Auditor he “would be aiding in a deceit upon the public.”<sup>879</sup>

### ***The resignation of Mr Landa***

31.71 As noted, on 3 April 2012 Mr Landa resigned from the position of Integrity Auditor. On 4 April 2012, Mr Landa sent a letter to the Hon George Souris MP, the then Minister for Racing, in which he said that failings in the legislation made the function of his position as an independent oversight “simply not possible.” Mr Landa further told the Minister:

In the circumstances I found that there was no way forward in defining the powers and duties of the Integrity Auditor without the consent and agreement of Greyhound Racing NSW. That situation could not, in my view, have been the intended consequence of the Parliament when it sought to create an independent oversight of this part of the racing industry. It certainly proved to render any semblance of independence or authority less than an illusion. Added to that, no agreement on key issues was ever achieved, or seemingly achievable.

In the circumstances I saw no alternative other than to resign my office and to draw your attention to this situation ...

Having occupied the office of The NSW Ombudsman I am fully cognisant of the role of an independent oversight authority. If the legislature had intended the Integrity Auditor to have this function, you should be aware that the current function fails and I should draw this to your attention.<sup>880</sup>

31.72 On 21 April 2012, Mr Landa sent a letter in substantially similar terms to the Editor of the Greyhound Recorder newspaper.<sup>881</sup> Mr Landa’s views were also reported in the media in mid-2012.<sup>882</sup>

### **Mr Gorrie**

31.73 As noted, Mr Gorrie has held the position of Integrity Auditor since 7 June 2012. He was initially appointed for a two year term. In 2014, he was appointed to a further two year term, ending on 7 June 2016.

31.74 Mr Gorrie describes the role as a part-time position. He spends, on average, about one to two hours per week in dealing with matters in relation to his functions as Integrity Auditor.<sup>883</sup> He has not engaged any staff to assist him.<sup>884</sup>

31.75 In August 2013 Mr Gorrie revised and finalised a document, “The Role and Functions of the Greyhound Racing Integrity Auditor”, as an educational tool for members of the public and industry participants. GRSNW publishes the “Role and Functions” document on a section of its website relating to the Integrity Auditor.

31.76 According to Mr Gorrie, the investigation of a complaint will typically involve receipt and acknowledgement of the complaint, initial review of the complaint, requesting a response from the racing official concerned, updating the complainant on the progress of the matter, and

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<sup>879</sup> Ibid.

<sup>880</sup> Letter dated 4 April 2012 from David Landa to the Hon George Souris MP, Minister for Racing: David Landa, Response to Order 1 dated 23 November 2015.

<sup>881</sup> Letter dated 21 April 2012 from Mr David Landa to the Editor, *The Greyhound Recorder*: David Landa, Response to Order 1 dated 23 November 2015.

<sup>882</sup> Article “NSW racing going to the dogs” by Natalie O’Brien, 15 July 2012, *The Sydney Morning Herald*: <<http://www.smh.com.au/nsw/nsw-racing-going-to-the-dogs-20120714-2230l.html>> (accessed 14 June 2016)

<sup>883</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015.

<sup>884</sup> Ibid.

inviting the complainant to make any further submissions, either in writing or by a pre-arranged meeting. Mr Gorrie may also seek information from GRNSW about matters arising. Mr Gorrie will then determine the complaint by a written determination.<sup>885</sup>

- 31.77 According to the “Role and Functions” document, the matters disclosed in complaints that the Integrity Auditor receives are treated as confidential, and parties are requested to observe confidentiality throughout the review and investigation of a complaint.<sup>886</sup>

### *Investigation of complaints*

- 31.78 Mr Gorrie does not regard the Act as permitting the Integrity Auditor to conduct formal hearings at which evidence is received.<sup>887</sup>
- 31.79 Mr Gorrie has not exercised any compulsory powers under s. 27(4) of the Act.<sup>888</sup>
- 31.80 Save as to one exception, Mr Gorrie has not investigated the functions of a racing official – or undertaken primary oversight of the functions of GRNSW relating to stewards, drug testing and control and registration – other than as may arise in investigating complaints he has received. The exception is that, on one occasion, at GRNSW’s request, he undertook an urgent review of GRNSW’s swabbing procedures (described at [31.83] to [31.87] below).
- 31.81 In his time as Integrity Auditor, Mr Gorrie has investigated about 21 complaints. The following table illustrates the nature of the complaints that Mr Gorrie determined to be within the jurisdiction of the Integrity Auditor and the outcomes of Mr Gorrie’s concluded investigations.

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<sup>885</sup> Ibid.

<sup>886</sup> GRNSW website, document “The Role and Functions of the Greyhound Racing Integrity Auditor”: <<http://grnsw.com.au/regulatory/concerns/integrity-auditor>> (accessed 14 May 2016).

<sup>887</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015.

<sup>888</sup> Ibid.

**Table 31.1 Complaints actioned by Graham Gorrie, Integrity Auditor, June 2012 to March 2016**

Nature of complaint	Date received	Finish date	Result of investigation
Two complaints by an industry participant regarding: (a) conduct of a Steward's Inquiry; and (b) false advertising in connection with contact information for the first Integrity Auditor.	25/6/2012	30/7/2012	No finding of corrupt, improper or unethical conduct. s. 27(2)(c) applied to first complaint; s. 27(2)(b) applied to second complaint.
Complaint by an industry participant that the GRNSW chairman acted in a partial and unethical manner.	29/6/2012	2/8/2012	No finding of corrupt, improper or unethical conduct. s. 27(2)(c) applied.
Complaint by an industry participant regarding the conduct of a track steward in allegedly not arranging for the swabbing of a dog trained by a person who was also the employer of the track steward's daughter.	20/8/2012	5/11/2012	No finding of corrupt, improper or unethical conduct – decision not to swab was made by control room steward, not track steward, on reasonable basis. s. 27(2)(c) applied. Recommendation that GRNSW introduce ethics training for staff.
Complaint by an industry participant regarding the conduct of a Steward in: (a) inadvertently sending the participant an email (addressed to another GRNSW official) stating "Tell her to get fucked"; (b) treating the participant unfairly compared with another participant the steward was said to have favoured.	5/9/2012	14/11/2012	No finding of corrupt, improper or unethical conduct. In respect of first complaint, the Steward's comment in the email was unprofessional and unfortunate but happened a number of months earlier and prompt apology given, with statement that Steward would be counselled. In respect of the second complaint, no corrupt conduct or unfair treatment exhibited. s. 27(2)(c) applied.
Complaint by an industry participant regarding conflict of interest by a GRNSW Steward.	14/8/2012	6/12/2012	No finding of corrupt, improper or unethical conduct. s. 27(2)(c) applied.
Complaint by an industry participant regarding alleged conduct of senior GRNSW integrity officer in alleged delay in finalising Inquiry following return of positive swabs in respect of which complainant suspended.	12/6/2013	17/7/2013	No finding of corrupt, improper or unethical conduct. s. 27(2)(c) applied.
Complaint by an industry participant against two senior GRNSW officials regarding conduct in connection with administrative steps taken to appoint a person to chair an inquiry into an incident involving the participant at a race meeting.	17/3/2014	28/5/2014	No finding of corrupt, improper or unethical conduct. s. 27(2)(c) applied.
Complaint by an industry participant regarding conduct of a GRNSW board member in assisting in handling a greyhound at an early morning trial.	1/3/2014	18/6/2014	No finding of corrupt, improper or unethical conduct – matter adequately dealt with by prior GRNSW investigation. s. 27(2)(c) applied.

Nature of complaint	Date received	Finish date	Result of investigation
Complaint by a number of industry participants about conflict of interest by GRNSW official with industry involvement by spouse.	13/5/2014	22/7/2014	No finding of corrupt, improper or unethical conduct – familial connection insufficient to establish a conflict of interest. s. 27(2)(c) applied.
Complaint by GRNSW board member about conduct of fellow GRNSW board member in denying to the Board, contrary to fact, having met with a member of the State Parliament (who was a prominent critic of GRNSW).	30/10/2014	10/12/2012	Complaint substantiated – finding that board member had breached Greyhound Racing Act 2009 and GRNSW Board Code of Conduct. Board free to consider suitability of Board member's appointment and whether to recommend to the Minister the removal of the Board member. Copy of Integrity Auditor's report to be provided to the Minister per s 28(1) of the Act. <sup>889</sup>
Complaint by industry participant - referred by Office of Liquor, Gaming & Racing ("OLGR") - that Stewards had engaged in corrupt conduct when conducting Inquiry into a positive reading for caffeine from participant's racing greyhound.	12/12/2014	30/3/2015	No finding of corrupt, improper or unethical conduct – no breach by stewards in exercise of their functions. s. 27(2)(c) applied.
Complaint by industry participant - referred by OLGR – regarding GRNSW Stewards, including: (i) that one steward had admitted to placing bet on a greyhound; (ii) inappropriate conduct by Stewards towards participant.	1/12/2014	14/4/2015	GRNSW steward who made admission had been reprimanded by GRNSW – action taken by GRNSW was appropriate. No finding by Integrity Auditor of corrupt, improper or unethical conduct. s. 27(2)(c) applied. s. 27(2)(a) also applied – complaint not made in good faith and involving vendetta to discredit stewards and GRNSW officials.
Complaint by industry participant - referred by OLGR – regarding scratching of participant's greyhound from race.	27/8/2015	14/10/2015	No finding of corrupt, improper or unethical conduct – scratching of greyhound was an error but bona fide reliance by GRNSW on OzChase information and GRNSW staff unsuccessful in attempts to phone participant to double-check information. s. 27(2)(c) applied.

Source: Graham Gorrie Response to Order 1 dated 3 June 2015

31.82 Mr Gorrie has not investigated a complaint in respect of the exercise of functions by a racing official other than a complaint that concerned conduct alleged to be corrupt, improper or unethical.<sup>890</sup>

#### **Review of GRNSW swabbing procedures: 2012**

31.83 In August 2012, at the request of GRNSW, Mr Gorrie undertook an urgent review of GRNSW's swabbing procedures following the publication of an article in *The Sydney Morning Herald* that raised concerns about various integrity issues.<sup>891</sup>

<sup>889</sup> On 12 December 2014, the Integrity Auditor received a further complaint about the conduct of the Board member. The Integrity Auditor's investigation was not completed owing to the resignation/removal of all GRNSW Board members following the broadcast of the *Four Corners program* in February 2015: Graham Gorrie, Response to Order 1 dated 3 June 2015.

<sup>890</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015.

- 31.84 In a report dated 20 August 2012 (“the Gorrie Report”), Mr Gorrie found no evidence – contrary to a suggestion made in the media report – that any completed swabs from race meetings in the last 12 months had gone missing. Rather, all swabs had been recorded and tracked. Nor did Mr Gorrie find any evidence to support the media allegation that swabs had taken an undue period of time to analyse.<sup>892</sup>
- 31.85 In addition, Mr Gorrie found no evidence that stewards had given preferential treatment to leading trainers by reducing their vigilance of swabbing of greyhounds they presented for racing.<sup>893</sup>
- 31.86 A stated limitation of the report was that, owing to the short turnaround required, Mr Gorrie was unable to determine whether, during the preceding 12 months, any racing official had tampered with any swab sample or sample test kit.<sup>894</sup>
- 31.87 Mr Gorrie made recommendations to GRNSW aimed at improving its reporting process and further recommended that GRNSW review its Swabbing Policy for increased clarity.<sup>895</sup>

#### ***‘Outside of jurisdiction’ enquiries***

- 31.88 A significant portion of Mr Gorrie’s work as Integrity Auditor involves dealing with what he refers to as “outside of jurisdiction” enquiries, from either industry participants or the general public, made by phone or email.<sup>896</sup> These are matters that Mr Gorrie regarded as not falling within the jurisdiction of the Integrity Auditor, as not relating to the exercise of functions by a racing official relating to greyhound racing.<sup>897</sup>
- 31.89 Such matters nonetheless typically require Mr Gorrie to spend time explaining to the enquirer aspects of greyhound industry governance and/or assisting with directing the enquiry to the appropriate person, whether within GRNSW or elsewhere.

#### ***Engagement with GRNSW***

- 31.90 Mr Gorrie provides monthly reports to GRNSW that set out the number of complaints received in the period and the status of current investigations.
- 31.91 From time to time, Mr Gorrie has also met with, and obtained briefings from, GRNSW’s General Manager, Racing and Integrity to keep abreast of matters such as stewards’ functions, current trends in drug use and adherence by stewards to the GRNSW Code of Conduct.<sup>898</sup>
- 31.92 Mr Gorrie states that he has not had a budget as such while he has been Integrity Auditor. Rather, on the applicable hourly rate, he has undertaken work assessing complaints and matters referred to him.<sup>899</sup>
- 31.93 Mr Gorrie states that he has not encountered any instances in which he was concerned that the independence of the Integrity Auditor was impaired or liable to be impaired. He states there has been no occasion where he wanted to undertake a particular activity and GRNSW prevented, or

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<sup>891</sup> Article “Going to the dogs – bikies, dopers and fraudsters” by Natalie O’Brien, 12 August 2012, *The Sydney Morning Herald* (online): <<http://www.smh.com.au/nsw/going-to-the-dogs--bikies-dopers-and-fraudsters-20120811-2418m.html>> (accessed 14 June 2016).

<sup>892</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015, Tab 3 (Annexure C).

<sup>893</sup> Ibid.

<sup>894</sup> Ibid.

<sup>895</sup> Ibid.

<sup>896</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015.

<sup>897</sup> The Act s. 26(1)(c).

<sup>898</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015. This role no longer exists at GRNSW with the equivalent responsibilities undertaken by the General Manager Compliance.

<sup>899</sup> Ibid.

attempted to prevent him, from doing so. Mr Gorrie also states that, at all times, GRNSW has been forthcoming with requests by him for information required to undertake his functions.<sup>900</sup>

31.94 Mr Gorrie states that GRNSW should take increased steps to publicise the role of the Integrity Auditor. He believes that a “revised communication strategy” would be appropriate to ensure that the role of the Integrity Auditor is understood. According to Mr Gorrie, this should involve, at least, an annual reminder of the Integrity Auditor’s role on the GRNSW website, in industry publications and to associations and clubs.<sup>901</sup>

## The views of Mr Costigan, Mr Landa, Mr Gorrie and GRNSW regarding the current Integrity Auditor model

31.95 The Commission has had regard to the views of Mr Costigan, Mr Landa and Mr Gorrie regarding the Integrity Auditor model, created by the Act, and any associated deficiencies or limitations.

31.96 Mr Costigan and Mr Landa were highly critical of the Integrity Auditor model. Mr Gorrie – whose engagements with GRNSW appear to have been generally more harmonious – was less critical, but nonetheless identified merit in an alternative model.

31.97 Mr Costigan, the first Integrity Auditor, said he saw merit in a legislative model by which the Integrity Auditor is appointed other than by GRNSW. Mr Costigan regarded this issue as strongly linked to the larger question of whether the same body (currently GRNSW) should be responsible for both development and promotion of the greyhound racing industry and also have primary responsibility for the regulation and integrity of the industry.

31.98 Mr Costigan told the Commission:

Having served for six (6) years on the Board of Racing NSW from March 2000 until August 2006 I have long held the view that a separate entity should exist in all three Codes<sup>902</sup> whose primary responsibility it is to ensure the regulation and integrity of the relevant industry. It is a nonsense to suggest that the two aspects of the industry namely promotion and integrity can continue to be administered by the one body.<sup>903</sup>

### Mr Landa

31.99 Mr Landa, the second Integrity Auditor, regarded the current model of the Integrity Auditor as deeply flawed.

31.100 As noted above, Mr Landa regarded the Act as deficient in conferring sufficient powers on the Integrity Auditor to be able to act, in a meaningful manner, independently.

31.101 Mr Landa said he resigned from the position because, given the absence of powers, to continue to act would be to aid in a deceit upon the public.

31.102 Mr Landa told the Commission:

GRNSW was at no time during my short association, a body that was fit for self-regulation. The Act only provided for the industry the charade of any independent restraints.<sup>904</sup>

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<sup>900</sup> Ibid.

<sup>901</sup> Ibid.

<sup>902</sup> Namely, thoroughbred racing, harness racing and greyhound racing.

<sup>903</sup> Mr Costigan also saw merit in the establishment of a single integrity commission across the three racing Codes: John Costigan, Response to Order 1 dated 14 July 2015.

<sup>904</sup> David Landa, Response to Order 1 dated 23 November 2015, [119].

## Mr Gorrie

31.103 Mr Gorrie believes that, to a large extent, the functions of the Integrity Auditor are adequately covered in the Act. However, Mr Gorrie believes that the Integrity Auditor should be granted the ability to administer oaths and, to avoid doubt, specific “own motion powers.”<sup>905</sup> Mr Gorrie states that these additional powers, by way of amendment to the Act:

... would give the Integrity Auditor further legitimacy to develop and undertake ongoing audit programs across the primary functions and conduct investigations/hearings where necessary.<sup>906</sup>

31.104 Mr Gorrie sees merit in changing the appointment process so that a panel selected by, for example, Government and industry representatives, rather than GRNSW, appoints the Integrity Auditor. According to Mr Gorrie, this would “add greater transparency and add emphasis to the independence of the Integrity Auditor role.”<sup>907</sup>

31.105 Mr Gorrie states that he does not envisage a *necessary* conflict or difficulty in having the one body (GRNSW) being responsible for development and promotion of the industry and of its regulation and integrity. He recognises, however, the potential for conflict if the current model (one body) is continued.<sup>908</sup> He also sees merit in an industry model by which a separate body is responsible for regulation and integrity, but notes that the funding and resourcing of such a body “would be critical in shaping its ability to implement acceptable regulatory and enforcement strategies.”<sup>909</sup>

## GRNSW

31.106 In its submission to the Commission, and previously to the Select Committee, GRNSW acknowledges that there are practical limitations on the independence of the Integrity Auditor.

31.107 Mr Hogan told the Select Committee that “[t]he powers and functions [of the Integrity Auditor] are not clearly defined enough to allow that position to act independently and decisively.”<sup>910</sup>

31.108 GRNSW also accepts that, as it is responsible for determining the budget for the Integrity Auditor, it has a direct ability to affect the Integrity Auditor’s capacity to carry out effectively his or her function.<sup>911</sup>

31.109 GRNSW further accepts that the Act lacks clarity in defining how the Integrity Auditor is to perform his or her functions, and that this has previously led to instances where GRNSW and the Integrity Auditor (Mr Landa) have disagreed on the proper interpretation of the legislation.<sup>912</sup>

31.110 GRNSW also states that it could have done more to publicise the role and existence of the Integrity Auditor than in fact was done.<sup>913</sup>

31.111 In terms of its preferred model, GRNSW suggests a model involving a Racing Integrity Commissioner who would operate across the three racing codes in place of the current Integrity

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<sup>905</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015; see also Graham Gorrie, Select Committee Public Hearing 15 November 2013: T45.

<sup>906</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015.

<sup>907</sup> Ibid.

<sup>908</sup> Graham Gorrie, Select Committee Public Hearing 15 November 2013: T50.

<sup>909</sup> Graham Gorrie, Response to Order 1 dated 3 June 2015.

<sup>910</sup> Select Committee Public Hearing 6 February 2014: T69.

<sup>911</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [196].

<sup>912</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [195].

<sup>913</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [197].

Auditor model.<sup>914</sup> GRNSW has previously propounded this tri-code regulator model both before the Select Committee<sup>915</sup> and in a written submission to the Five Year Statutory Review.<sup>916</sup> This model is said to draw upon the existing Victorian model.<sup>917</sup>

- 31.112 For the reasons identified in Chapter 29, the suggested tri-code regulator is an unsatisfactory response for the present crisis that the greyhound racing industry faces, and would merely serve to defer steps that must be taken now to protect the integrity of the industry.
- 31.113 GRNSW seemingly accepts that the Independent Auditor should be independent of GRNSW. GRNSW also accepts that the powers of that person – whether the model be based on a tri-code regulator or an enhanced Integrity Auditor – should include the power to: (a) conduct ‘own motion inquiries’ where no complaint has been received; (b) compel witnesses to provide oral evidence; and (c) conduct audits in relation to integrity processes.<sup>918</sup> GRNSW also believes that Government, not GRNSW, should fund the Independent Auditor.<sup>919</sup>

## The current model is flawed and needs to be replaced

- 31.114 The Commission is firmly of the view that the current Integrity Auditor model is flawed and needs to be replaced.

### Inherent lack of independence

- 31.115 To ensure the effectiveness of the position and to maintain public confidence, it is essential that any person having oversight functions be independent of the body the subject of the intended oversight. A fundamental defect in the current model is that the very body (ie. GRNSW) to which the Integrity Auditor is required to apply oversight appoints the Integrity Auditor. This is so, notwithstanding that the Minister must also approve any such appointment.
- 31.116 In addition, GRNSW has seemingly exercised a power to remove an Integrity Auditor. This occurred in July 2011 when the Board of GRNSW resolved to end the appointment of Mr Costigan as Integrity Auditor and to have Mr Landa replace him.<sup>920</sup>
- 31.117 The independence of the Integrity Auditor is also liable to be impaired by the fact that GRNSW determines the budget of the Integrity Auditor. As GRNSW acknowledges, this can directly affect (and potentially impair) the capacity of the Integrity Auditor to carry out his or her functions.<sup>921</sup>
- 31.118 The material before the Commission indicates that many industry participants are highly critical of the perceived lack of independence inherent in the position of the Integrity Auditor. The Commission is of the view that such criticism is valid. The fact that GRNSW appoints and can dismiss the Integrity Auditor, and can control his or her budget, profoundly impairs the true independence of the position and is a major defect in the current model.

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<sup>914</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [199]. See also GRNSW Response to Order 2 dated 15 June 2015.

<sup>915</sup> Select Committee Public Hearing 6 February 2014: T53.

<sup>916</sup> GRNSW, Submission 16 to the Five Year Statutory Review dated 13 February 2015, pp. 21-22.

<sup>917</sup> The *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009* (Vic) established the office of Racing Integrity Commissioner (“RIC”). The inaugural RIC, Mr Sal Perna, has held the position since March 2010.

<sup>918</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [201].

<sup>919</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [200], [203].

<sup>920</sup> Letter dated 8 July 2011 from Brent Hogan, GRNSW Chief Executive to John Costigan, GRNSW Integrity Auditor: GRNSW, Response to Order 2 dated 22 June 2015.

<sup>921</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [196].

## Lack of confidence in the office of the Integrity Auditor

- 31.119 To a significant extent, industry participants also lack confidence in the office of the Integrity Auditor. Mr Landa's resignation as Integrity Auditor in 2012, and his public criticism – both in his letter to *The Greyhound Recorder* and his evidence before the Select Committee – of the lack of independence of the role of Integrity Auditor and the perceived deficiencies in the legislation, served to focus attention, by the community and industry participants, on such matters.
- 31.120 The Commission finds that, irrespective of the capabilities of the individuals having held the office of the Integrity Auditor,<sup>922</sup> there is a significant lack of confidence by industry participants and the community in the position of the Integrity Auditor. This is mirrored in submissions the Commission has received from industry participants. The lack of confidence also reflects a corresponding concern that there is no reliable means of oversight of GRNSW. One industry participant said that, particularly following the resignation of Mr Landa and his scathing comments about GRNSW: "Participants feel GRNSW is simply a law [unto] themselves with no meaningful way for participants to achieve accountability."<sup>923</sup>
- 31.121 The Commission has also had regard to the views of industry associations, which reinforce the concerns expressed by participants. Thus, the NSW Greyhound Breeders, Owners and Trainers' Association ("GBOTA") submitted that the appointment of an Integrity Auditor should be an independent process,<sup>924</sup> and that the Integrity Auditor should be as independent as possible with a clear capacity to report back to the Minister and to be able to act as "a truly independent watchdog."<sup>925</sup>
- 31.122 To similar effect, Mr Dennis Carl of the Greyhound Action Group NSW Inc said that it was "vitaly important" that the Integrity Auditor be independent. He indicated that industry participants had no confidence in the position of Integrity Auditor.<sup>926</sup>

## Deficiencies in the powers conferred on the Integrity Auditor

- 31.123 The Commission finds also that there are significant deficiencies in the powers conferred on the Integrity Auditor that limit that person's capacity to provide comprehensive oversight of integrity functions. Thus, for example, the Integrity Auditor has no power to conduct hearings and receive sworn oral evidence.<sup>927</sup> The Integrity Auditor's powers of compulsion are limited to those in s. 27(4) of the Act.
- 31.124 In addition, there is uncertainty as to whether the Integrity Auditor is empowered to conduct 'own motion inquiries', with Mr Landa – a former Chief Magistrate – taking the view that no such power exists. None of Mr Costigan, Mr Landa or Mr Gorrie has purported to conduct 'own motion inquiries'.
- 31.125 Further, by its terms, the Act seemingly does not permit the Integrity Auditor to investigate the exercise of functions by a racing official, relating to greyhound racing, other than where the Integrity Auditor has first received a complaint about the exercise of such functions by a racing official.<sup>928</sup>

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<sup>922</sup> The Commission makes no finding critical of the individuals to have held the office of the Integrity Auditor.

<sup>923</sup> Greyhound Action Group, Submission 18 to the Commission dated 10 June 2015.

<sup>924</sup> Brenton Scott, Executive Officer, GBOTA, Select Committee Public Hearing 15 November 2013: T20.

<sup>925</sup> Brenton Scott, Executive Officer, GBOTA, Select Committee Public Hearing 15 November 2013: T26.

<sup>926</sup> Dennis Carl, Greyhound Action Group NSW Select Committee Public Hearing 15 November 2013: T36; Select Committee, Public Hearing 6 February 2014: T49.

<sup>927</sup> Contrast the position of the Victorian Racing Integrity Commissioner: *Racing Act 1958* (Vic) s. 37BA; Commissioner Sal Perna, final report "2015 Own Motion Inquiry into Live Baiting in Greyhound Racing in Victoria" (June 2015), p. 7.

<sup>928</sup> The Act s. 26(1)(c), s. 27(2) See also GRNSW Response to Order 2 dated 15 June 2015.

31.126 Nor does the Act contain provisions permitting the Integrity Auditor to provide information, including documents, to the NSW Police Force, the NSW Office of the Director of Public Prosecutions, the Independent Commission Against Corruption, and other law enforcement bodies. Such a provision is appropriate and its omission is a further deficiency in the current model.<sup>929</sup>

#### ***A new model***

31.127 The position of Integrity Auditor has been part-time and based principally on investigating matters arising from occasional letters of complaints received from industry participants. On only one occasion has there been an audit undertaken of GRNSW functions – being the swabbing audit that Mr Gorrie undertook, at GRNSW’s request, on an urgent basis in August 2012 in response to a media article raising integrity concerns.

31.128 The current Integrity Auditor model has significant deficiencies and is inherently flawed, as described above.

31.129 The issue of what should be done in respect of the current Integrity Auditor model is inextricably linked to the larger question of whether GRNSW should be responsible for the development and promotion of the greyhound racing industry and also have primary responsibility for the regulation and integrity of the industry. As described in Chapter 29 and elsewhere in this Report, GRNSW has proved incapable of adequately regulating the greyhound racing industry. The Commission is firmly of the view that the formal separation of the commercial functions of GRNSW from its regulatory functions is an essential step in seeking to ensure the integrity of the greyhound racing industry in NSW.

31.130 The Integrity Auditor should be replaced as part of the necessary change that the Commission identifies in Chapter 30, namely the separation of commercial and regulatory functions, the enactment of a new statutory body, the Greyhound Racing Integrity Commission (“the GRIC”) and the appointment of a Greyhound Racing Integrity Commissioner (“the GRIC”). Further, the powers of the GRIC should extend beyond the limited powers associated with the Integrity Auditor model. Thus, as noted in Chapter 30, the powers of the GRIC should include powers to conduct ‘own motion inquiries’, to summon persons to give oral evidence, to receive oral evidence on oath or affirmation, to investigate conduct of a racing official in the absence of particular complaint being first received, to conduct audits of GRNSW functions, and to refer information to the NSW Police Force and other law enforcement bodies.

## **Recommendation**

80. The Greyhound Racing Integrity Auditor should be replaced as part of the necessary change that the Commission identifies in Chapter 30, namely the separation of commercial and regulatory functions, the creation of a new statutory body, the NSW Greyhound Racing Integrity Commission and the appointment of a NSW Greyhound Racing Integrity Commissioner.

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<sup>929</sup> A comparable provision applies in respect of the Victorian Racing Integrity Commissioner: *Racing Act 1958* (Vic) s. 37E.

# Abbreviations

## Organisations and important roles

ANKC Ltd	Australian National Kennel Council Ltd
AVA	Australian Veterinary Association
AWA Council	NSW Animal Welfare Advisory Council
AWC	Animal Welfare Committee (proposed committee of GRIC)
AWL	Animal Welfare League NSW
CGRC	Canberra Greyhound Racing Club
DEFRA	The Department for Environment, Food and Rural Affairs (UK)
Dogs NSW	Formally, the Royal NSW Canine Council Ltd (and the NSW member body of the ANKC Ltd)
GA	Greyhounds Australasia
GBGB	Greyhound Racing Board of Great Britain
GBOTA	NSW Greyhound Breeders, Owners and Trainers' Association
GCA	Greyhound Coursing Association
GHRRA	Greyhound and Harness Racing Regulatory Authority
GRA	Greyhound Racing Authority (former controlling body for greyhound racing in NSW)
GRIC	Greyhound Racing Integrity Commission (proposed body for a remodelled NSW industry)
GRIC Board	GRIC Board (Board of proposed body for a remodelled NSW industry)
GRI Commissioner	Greyhound Racing Integrity Commissioner (proposed role for a remodelled NSW industry)
GRICG	Greyhound Industry Consultation Group
GRNSW	Greyhound Racing New South Wales
GRNSW Board	The members of GRNSW
GRNZ	Greyhound Racing New Zealand
GRSA	Greyhound Racing South Australia Ltd
GRV	Greyhound Racing Victoria
HRNSW	Harness Racing New South Wales
IAB	Internal Audit Bureau of NSW
Joint Select Committee	NSW Joint Select Committee on Companion Animal Breeding Practices
JWG	Joint Working Group Joint Working Group established by GRNSW in November 2015 to assist with the development of GRNSW's strategic approach and provide recommendations to GRNSW's Chief Executive
NCA	National Coursing Association

RQ	Racing Queensland
RAT	Racing Appeals Tribunal of NSW
RWWA	Racing and Wagering Western Australia
RSPCA Australia	Royal Society for the Prevention of Cruelty to Animals – Australia
RSPCA NSW	Royal Society for the Prevention of Cruelty to Animals – NSW
RSPCA UK	Royal Society for the Prevention of Cruelty to Animals – United Kingdom
Select Committee	NSW Legislative Council’s 2014 Select Committee on Greyhound Racing in NSW
Tabcorp	Tabcorp Holdings Limited (formerly, in NSW, the Totalisator Agency Board (TAB) and Tab Limited)
VAP	Veterinary Advisory Panel (independent panel of veterinarians who advised GRNSW between 2009 and 2011)
WDA	Working Dog Alliance Australia
WWP	Welfare Working Party (an internal GA committee comprised of representatives from its member bodies)

## Legislation and subordinate legislation

2002 Act	<i>Greyhound Racing Act 2002 (NSW)</i>
Act	<i>Greyhound Racing Act 2009 (NSW)</i>
Crimes Act	<i>Crimes Act 1900 (NSW)</i>
CAA	<i>Companion Animals Act 1998 (NSW)</i>
CAR	<i>Companion Animals Regulation 2008 (NSW)</i>
cl.	Clause
GAR	Greyhounds Australasia Rules
Greyhound Welfare Regulations (UK)	<i>Welfare of Racing Greyhounds Regulations 2010 (UK)</i>
HRA	<i>Harness Racing Act 2009 (NSW)</i>
ICAC Act	<i>Independent Commission Against Corruption Act 1988 (NSW)</i>
LR	Local Rule (of the Rules)
NPWA	<i>National Parks and Wildlife Act 1974 (NSW)</i>
POCTAA	<i>Prevention of Cruelty to Animals Act 1979 (NSW)</i>
POCTAR	<i>Prevention of Cruelty to Animals Regulation 2012 (NSW)</i>
R	Rule (of the GARs or the Rules)
RATA	<i>Racing Appeals Tribunal Act 1983 (NSW)</i>
RATR	<i>Racing Appeals Tribunal Regulation 2010 (NSW)</i>
Rules	GRNSW Greyhound Racing Rules

s.	Section or sub-section
SCI Act	<i>Special Commissions of Inquiry Act 1983</i> (NSW)
SDA	<i>Surveillance Devices Act 2007</i> (NSW)
TRA	<i>Thoroughbred Racing Act 1996</i> (NSW)

## Reports, policies and other

Auditor-General GRA/HRA Amalgamation Report	NSW Auditor-General, report entitled “Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority” (April 2008)
Bittar Report	Paul Bittar, report entitled “Review of the Integrity Structures of the Victorian Racing Industry” (April 2016)
Board Code	GRNSW Board Code of Conduct
Blue Paws	Blue Paws Breeders and Owners Incentive Scheme
CA Register	NSW Companion Animals Register
DGR GRA/HRA Amalgamation Report	NSW Department of Gaming and Racing Working Party, report entitled “Feasibility of the Amalgamation of the Greyhound Racing Authority and the Harness Racing Authority” (August 2003)
Donoughue Report	Lord Donoughue of Ashton, report entitled “Independent Review of the Greyhound Industry in Great Britain” (November 2007)
EFRAC Report	UK Environment, Food and Rural Affairs Committee, report entitled “Greyhound Welfare”, House of Commons Second Report of Session 2015-16 (25 February 2016)
enforceable Boarding Code	NSW Animal Welfare Code of Practice No 5 – Dogs and Cats in Animal Boarding Establishments of 1996
enforceable Breeding Code	NSW Animal Welfare Code of Practice – Breeding Dogs and Cats of 2009
Ferrier Report	Dr Rod Ferrier, report (untitled) for GRNSW (August 2015)
Five Year Statutory Review Report	NSW Government, report entitled “Five Year Statutory Review of the <i>Greyhound Racing Act 2009</i> : Review Report” (May 2015)
Five Year Statutory Review	Five Year Statutory Review of the <i>Greyhound Racing Act 2009</i> (NSW)
<i>Four Corners report</i>	Report which aired on the ABC’s <i>Four Corners</i> program entitled “Making a Killing” (16 February 2015)
GAP Program	GRNSW’s Greyhounds As Pets program
GIDF	Greyhound Industry Development Fund
Government Response to Select Committee First Report	NSW Government, “Government Response to the ‘Select Committee on Greyhound Racing in NSW First Report’” (September 2014)
GRNSW Breeding Code	GRNSW Code of Practice for Breeding, Rearing and Education

GRNSW Codes of Practice	GRNSW Training Code and GRNSW Breeding Code
GRNSW Final Response	GRNSW, Final Response 20A to the Issues Paper on Overbreeding and Wastage dated 11 January 2016
GRNSW Training Code	GRNSW Code of Practice for the Keeping of Greyhounds in Training
IAB Welfare Audit Report	IAB, report entitled "Greyhound Racing NSW – Internal Audit of Animal Welfare" (June 2014)
IER Report	IER Pty Ltd, report for OLGR entitled "Size and Scope of the NSW Racing Industry" (2014)
Integrity Auditor	Greyhound Racing Integrity Auditor
JWG Report	JWG, final report entitled "Implementing reform in the NSW Greyhound Racing Industry: Report to the Interim Chief Executive of Greyhound Racing NSW from the Joint Working Group" (January 2016)
KLAIM	Kennel Locator and Inspection Manager
KPMG Report	KPMG, report entitled "Articulating the Way Forward" (August 2015).
Lewis Report	Judge Gordon Lewis AM, report entitled "A Report on Integrity Assurance in the Victorian Racing Industry" (August 2008)
MacSporran Report	Commissioner Alan MacSporran QC, report entitled "Final Report of the Queensland Greyhound Racing Industry Commission of Inquiry" (2015)
Madden Report	David Madden, report entitled "Comments on Drug Testing Arrangements Associated with the NSW Greyhound Racing Industry" (19 July 2015)
Milne Report	Dr Charles Milne, Chief Veterinary Officer, report entitled "Investigation into Animal Welfare and Cruelty in the Victorian Greyhound Industry" (30 April 2015)
NCA Report	National Commission of Audit, report entitled "Towards Responsible Government" (2014)
NGWS	GA's Greyhound Welfare Strategy
Nous Group Report	Nous Group, report entitled "Review of Greyhound Racing Veterinary Services in New South Wales" (24 March 2016)
OLGR Report	OLGR, report entitled "Appointments Process Review: Greyhound Racing NSW – <i>Greyhound Racing Act 2009</i> ; Harness Racing NSW – <i>Harness Racing Act 2009</i> " (November 2013)
OLGR Review	OLGR's 2011 review of Board appointments under the Act and the HRA
Perna Report	Commissioner Sal Perna, final report entitled "2015 Own Motion Inquiry into Live Baiting in Greyhound Racing in Victoria" (June 2015)
QRS Initiative	Quality Regulatory Services initiative
Scott Report	Malcolm Scott, "2008 Independent Review of the Regulatory Oversight of the NSW Racing Industry" (June 2008)
Select Committee First Report	Select Committee, report entitled "Greyhound Racing in New South Wales – First Report" (March 2014)
Sector Seven Injuries Report	Sector Seven Pty Ltd, report entitled "Review of GRNSW governance arrangements regarding Stewards reporting of greyhound racing injury, fatality, and related euthanasia" (December 2015)
Sector Seven Stewards Report	Sector Seven Pty Ltd, report entitled "Stewards Review Report" (April 2016)

Tasmanian Report	Rod Andrewartha and Tony Murray, final report entitled “Review of Arrangements for Animal Welfare in the Tasmanian Greyhound Racing Industry” (13 March 2015)
Tasmanian Select Committee	Joint Select Committee on Greyhound Racing in Tasmania
Thoroughbred Act Review	Five Year Statutory Review of the <i>Thoroughbred Racing Act 1996</i> (NSW)
Thoroughbred Act Review Report	Michael Foggo, report entitled “Five Year Statutory Review of the <i>Thoroughbred Racing Act 1996</i> and Three Year Statutory Review of the <i>Australian Jockey and Sydney Turf Clubs Merger Act 2010</i> ” (April 2014)
Victorian Greyhound Code	Victorian Code of Practice for the Operation of Greyhound Establishments (2004)
Welfare and Compliance Review	GRNSW, report entitled “Review of Welfare and Compliance Staffing Arrangements” (October 2014)
Working Dog Alliance Report	WDA, report entitled “Review & Assessment of Best Practice Rearing, Socialisation, Education & Training Methods for Greyhounds in a Racing Context” (July 2015)



# Glossary

Attendant	A <b>registered person</b> , other than an owner or trainer, who holds an Attendant's Licence with GRNSW which authorises them to be physically in charge of a greyhound while the greyhound is on the premises of a club for racing.
Barking muzzle	A device used on a greyhound for the purpose of restricting its ability to bark, which can also restrict its ability to pant and control its body temperature.
Blistering	A non-veterinary procedure, often performed by <b>muscle men</b> , by which irritant substances are rubbed on an animal's skin over a bone injury with the intention that the resultant heat and inflammation of the skin and subcutaneous tissue will heal the bone.
Blue Paws	A scheme (abandoned by <b>GRNSW</b> on 1 July 2015) that sought to promote, develop and encourage increased investment in the greyhound breeding industry. Greyhound owners had the opportunity to receive bonus payments in addition to the standard prize money if their greyhound won a race carrying a Blue Paws bonus.
Breaker	A person who cares for a greyhound between 14 and 18 months of age. A breaker teaches a greyhound the skills to compete in races and familiarises it with the race track environment before it can move to <b>pre-training</b> or <b>training</b> . Also known as an <b>educator</b> .
Breaking-in	An educative stage in greyhound training (which usually commences at around 14 months) and the first stage during which they are given an opportunity to chase on-track. The breaking-in process takes approximately one month and gives the greyhound an opportunity to fine tune its natural instinct to chase.
Breeder	A <b>registered person</b> who holds a GRNSW Breeder's Licence which enables them to: <ul style="list-style-type: none"><li>• arrange for the service or artificial insemination of a dam;</li><li>• care for a dam whelping a litter of pups; and</li><li>• care for an unnamed greyhound including times the greyhound is being whelped and reared.</li></ul>
Breeding female	A female greyhound registered with GRNSW under the Rules as being used for breeding purposes.
Brood bitch	See <b>breeding female</b> .
Bull-ring	A small track, typically enclosed and circular, containing a rail with an arm attached to it; the arm can be spun around the rail with a <b>lure</b> strapped to it.
Centres of Excellence	An expression used by GRNSW to denote greyhound racing industry hubs with upgraded racing facilities that implement best-practice animal welfare infrastructure, as well as high quality non-racing infrastructure.
Club-appointed veterinarian	A veterinary surgeon who is sourced and appointed by a greyhound racing club to provide veterinary services in connection with a greyhound race meeting. To be distinguished from <b>GRNSW-employed veterinarians</b> .
Club rationalisation	An expression used by GRNSW to describe a proposal to reduce the number of greyhound racing clubs in NSW.
Controlling Body	The approved controlling authority or the legislated body having control of greyhound racing, or an aspect thereof, in Australia or New Zealand
Corporate bookmakers	Companies who carry on business as bookmakers and who are registered in the Northern Territory or Tasmania. While individual bookmakers fielding at racecourses may operate through a corporate structure, they are not generally referred to as 'corporate bookmakers'.

Coursing	The practice of using dogs, such as greyhounds, to hunt and pursue an object. Historically, the object used in coursing was a live animal, such as a hare. These days an artificial lure is used.
Dedicated trialling session	A series of greyhound races that are not connected to a race meeting.
Education	See <b>breaking-in</b> .
Educator	See <b>breaker</b> .
EPO	Erythropoietin: A hormone produced by the kidneys which stimulates red blood cell production in the bone marrow. This increases the level of oxygen that the blood is able to absorb, thereby increasing stamina and reducing fatigue.
Euthanasia	<i>(Veterinary Science)</i> The terminating of an animal's life, usually because it is ill, injured, abandoned, etc.
Five Freedoms	A widely-used framework for assessing whether the basic needs of animals are being met. The Five Freedoms are: <ul style="list-style-type: none"> <li>• Freedom from hunger or thirst by ready access to fresh water and a diet to maintain full health and vigour.</li> <li>• Freedom from discomfort by providing an appropriate environment including shelter and a comfortable resting area.</li> <li>• Freedom from pain, injury or disease by prevention or rapid diagnosis and treatment.</li> <li>• Freedom to express normal behaviours, by providing sufficient space, proper facilities and company of the animal's own kind.</li> <li>• Freedom from fear and distress by ensuring conditions and treatment which avoid mental suffering.</li> </ul>
Fixed odds wagering	Unlike pari-mutuel wagering, the odds and the potential return on a winning bet is fixed at the time the bet is placed.
GAP Program	GRNSW's 'Greyhounds As Pets' Program which aims to rehome retired racing greyhounds.
Greenhounds	A program for retired greyhounds involving a series of behavioural assessments which, if successfully completed, exempts the greyhound from the requirement under NSW law to wear a muzzle in public (provided it wears a 'Greenhound' collar).
GRNSW-employed veterinarian	A veterinary surgeon who is either a salaried GRNSW employee, or a casual/locum paid by GRNSW on a weekly or per meeting basis, to provide veterinary services in connection with greyhound racing. To be distinguished from <b>club-appointed veterinarians</b> .
Habituation	The process whereby a young animal (greyhound pup) becomes accustomed to non-threatening environmental stimuli and learns to ignore them.
Hand slip	When a person releases a greyhound from the lead to chase a moving <b>lure</b> , usually on a bend of the track.
Incapacitation period	A period of time, usually expressed in days, for which an injured greyhound is prohibited from racing. The period of time (sometimes referred to as a 'stand down period') is imposed at the discretion of stewards.
Inter-code Deed	A 99-year agreement entered into in 1998 by Racing NSW, <b>HRNSW</b> and the then Thoroughbred Racing NSW and <b>GRA</b> which governs the distribution of the funds derived from the <b>Racing Distribution Agreement</b> between the three racing codes in NSW.
Joint industry submission	A submission made to the <b>Select Committee</b> jointly by <b>GRNSW</b> , <b>GBOTA</b> , the Metropolitan and Provincial Greyhound Clubs Association, the Greyhound Racing Clubs Association and the Greyhound Action Group.

Leakage	A term used by <b>GRNSW</b> as another way to describe <b>wastage</b>
Licensed person	A person who holds one or more licence(s) with GRNSW.
Live baiting	The practice of using live animals (such as rabbits, possums and piglets) as a training method to ‘blood’ young greyhounds in the belief that they will then better chase the lure presented to them on a greyhound racing track.
Lure	An object, natural or man-made, that is strapped to an arm, attached to a rail and spun around a race track or <b>bull-ring</b> with the intention of encouraging or inciting a greyhound to pursue or attack the object.
Masters Racing	A category of greyhound racing, designed to extend career longevity, which is open to (older) greyhounds who have reached a minimum age of 45 months.
Muscle man	A person with no formal qualifications or training in the diagnosis and treatment of animals, who purports to be able to treat injuries and illnesses in greyhounds. Muscle men are often engaged by industry participants as a cheaper alternative to veterinarians.
Needling	A non-veterinary procedure, often performed by <b>muscle men</b> , as a treatment intervention for greyhounds considered to be ‘lame’.
Non-TAB meeting (or track/club)	Meetings, clubs or tracks that are not run in conjunction with Tabcorp. There are currently 20 of these clubs in NSW. See also <b>TAB meeting</b> .
On-track veterinarian	A qualified veterinary surgeon who is engaged to provide veterinary care and services in connection with a greyhound race meeting, either as a <b>GRNSW-employed veterinarian</b> or as a <b>club-appointed veterinarian</b> .
Owner	A person who has a legal or equitable interest in a greyhound, including a lessee, with the interest being registered or recorded with GRNSW.
Owner-Trainer	A <b>registered person</b> who holds a GRNSW Owner-Trainer’s Licence which enables them to train a greyhound that they either fully own or part own.
OzChase	The IT platform used by GRNSW to input and record data for the administration of greyhound racing in NSW.
Pari-mutuel wagering	The total of all wagers on a race, for any bet type, is pooled and, after appropriate deductions have been made (eg. Tabcorp’s commission), the pool of money is shared by those who picked the winners. This is a totalisator betting system.
Pre-training	The period of the lifecycle (beginning around 14 months) during which greyhounds adjust to kennel life and achieve race fitness by regular trialling, either individually or against other young greyhounds. Pre-training involves moving the greyhound to a racing kennel, changing to a racing diet high in fat and energy, increasing aerobic fitness and ultimately running in <b>qualifying trials</b> .
Pin-firing	A non-veterinary procedure, often performed by <b>muscle men</b> , by which an instrument akin to a soldering iron is repeatedly put through an animal’s skin, in the subcutaneous tissues around an injured bone, in the thought that the resultant acute soreness and inflammation will heal the chronic injury of the underlying bone.
Public trainer	A <b>registered person</b> who holds a GRNSW public Trainer’s Licence which enables them to train a greyhound for themselves and other members of the public.
Qualifying trial	The competitive pursuit of a lure by one or more greyhounds in a <b>trial</b> held pursuant to conditions prescribed by GRNSW and by which the eligibility of greyhounds to compete in races is determined.
R 106 Form	A Notice of Retirement Form submitted by an industry participant under R 106 of <b>the Rules</b> .
Race Field Information Use Fees	Fees charged by the racing control bodies to wagering operators for using race field information prepared by the controlling bodies. RFIU Fees were introduced after the NSW Parliament amended the <i>Racing Administration Act 1998</i> (NSW).

Racing Distribution Agreement	A 99-year agreement entered into in 1998 by the NSW Totalisator Agency Board (now, <b>Tabcorp</b> ), NSW Racing Pty Limited, the then <b>GRA</b> , <b>HRNSW</b> and the then NSW Thoroughbred Racing Board (now <b>Racing NSW</b> ) after the Totalisator Agency Board was privatised in 1997. It requires Tabcorp to pay a percentage of wagering turnover to the three racing codes in NSW.
Rearer	A person who cares for a greyhound during the rearing period.
Rearing period	The period of the lifecycle (generally between about 8-14 weeks and 12-16 months) during which most greyhounds are kept in paddocks or open space environments in a semi-rural or rural setting, where they can play and exercise to gain physical strength and fitness
Registered person	A person who is registered with GRNSW as an industry participant. This includes <b>licensed persons</b> .
Sclerosing	A non-veterinary procedure, often performed by <b>muscle men</b> , by which a highly irritant substance is injected into an animal's torn muscle, producing pain and severe inflammation, in the belief that the body's natural production of scar tissue will effectively close any deficit in the muscle.
Service	The insemination of a greyhound bitch resulting from a physical mating or a mating by artificial insemination.
Sire	A male greyhound used for the purpose of breeding.
Socialisation	A special learning process whereby an individual pup learns to accept the close proximity of other dogs, as well as members of other species, thereby learning how to interact with them.
Spelling	A period of the lifecycle during which a greyhound's exercise generally consists of free galloping with no visits to the track, loading into boxes or hard runs. This gives the greyhound time to recover from training, both physically and mentally.
Stewards' report	A report published by <b>GRNSW</b> which records occurrences at a race meeting. It is an important means by which members of the public, including punters and bookmakers, should be able to obtain information about how individual greyhounds performed in a race.
Studmaster	A <b>registered person</b> who has the care, control, or custody of a <b>sire</b> .
TAB distributions	Contractual arrangements with <b>Tabcorp</b> by which fees for delivery of a racing product are distributed between <b>GRNSW</b> , <b>Racing NSW</b> , the NSW Thoroughbred Racing Board, and <b>HRNSW</b> in accordance with the <b>Racing Distribution Agreement</b> .
TAB meeting (or track/club)	Meetings, clubs or tracks whose races are run in conjunction with the wagering company Tabcorp. There are 14 of these clubs in NSW. See also <b>Non-TAB meeting</b> .
Tax harmonisation	The scheme which decreases the level of tax that the NSW Government will receive from taxation on racing to match the rates set by the Victorian Government for its racing industry. The scheme was legislated in the <i>Tax Harmonisation Act 2015</i> (NSW).
Tax parity	See <b>tax harmonisation</b> .
Totalisator derived odds	Any odds derived from or contingent on totalisator odds but does not include <b>totalisator odds</b> .
Totalisator odds	Any odds which are dependent on the result of the working of a totalisator or an event of contingency.
Track rationalisation	An expression used by GRNSW to denote a proposed reduction in the number of greyhound racing tracks in NSW, with the remaining tracks accessible to the majority of existing industry participants.
Trainer	A <b>registered person</b> who holds a GRNSW Trainer's Licence which enables them to train a greyhound for a purpose pursuant to <b>the Rules</b> .

Training	The preparation, education or exercise of a greyhound to race or trial, including ongoing physical conditioning and exposure to kennelling, starting boxes, race tracks and chasing.
Trial	The competitive pursuit of a lure by one or more greyhounds at either a race track or a trial track. At a race track, trials may be performed pre-race or post-race. Trials may also be performed as part of <b>dedicated trialing sessions</b> or at unregistered trial tracks. Trials are often conducted for the purpose of assessing a greyhound's performance and fitness to race (sometimes referred to as a <b>qualifying trial</b> ).
Trial track	Land (not being a racecourse licensed under the <i>Racing Administration Act 1998</i> for greyhound racing meetings) that is held out by any person having the management or control of the land, whether as owner, lessee, occupier or otherwise, as being available for the purpose of enabling greyhounds, other than those owned by, or leased to, that person, to compete in trials or be trained in racing.