

# Submission on the *Greyhound Racing Act 2017* Statutory Review – Discussion Paper

**2 September 2020**

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The NSW Young Lawyers Animal Law Committee **(Committee)** makes the following submission in response to the *Greyhound Racing Act 2017* Statutory Review – Discussion Paper **(Discussion Paper)**.

## **NSW Young Lawyers**

NSW Young Lawyers is a division of the Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises a group of over 400 members interested in animal protection and laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use their legal skills and the law to improve the protection of animals.

## Structure of submission and summary of recommendations

The Committee’s submission will address the following questions from the Discussion Paper. We also include in the below table, a summary of the recommendation for each question addressed by the Committee.

		Summary of recommendations
<b>SECTION 1: SCOPE OF THE GREYHOUND RACING ACT 2017</b>		
1.1	If the GR Act has been effective at achieving its aims	The key aims of the Greyhound Racing Act 2017 (NSW) ( <b>GR Act</b> ) operate at cross-purposes, and animal welfare and integrity standards for greyhounds are not being met.
1.2	If the governance arrangements for the industry are appropriate	<ul style="list-style-type: none"> <li>• There is a high likelihood that the self-funded model which allows Greyhound Racing NSW (<b>GRNSW</b>) to fund the Greyhound Welfare and Integrity Commission (<b>Commission</b>) will continue to compromise animal welfare in the pursuit of maximising industry profits.</li> <li>• GRNSW appears to not allow for appropriate funding nor enabling governance arrangements that permit measurable systemic and industry-wide change.</li> <li>• The Greyhound Racing Regulation 2019 (NSW) and the Greyhound Code of Practice is a positive addition to the governance instruments to support the application of the GR Act.</li> </ul>
<b>SECTION 2: THE GREYHOUND WELFARE AND INTEGRITY COMMISSION</b>		
2.1	If the Commission’s legislative objectives and functions are appropriate and being actioned effectively	<ul style="list-style-type: none"> <li>• The Commission’s legislative objectives and functions relating to the welfare of greyhounds, both on and off the tracks, are neither appropriate, nor effectively actioned.</li> <li>• In particular, it is recommended that there should be whole-of-life tracking for all greyhounds to ensure that industry participants cannot avoid rehoming and care obligations through ownership transferral.</li> </ul>
2.2	If the current funding arrangements for the industry are appropriate	<ul style="list-style-type: none"> <li>• Animal welfare funding is inadequate, and needs to be increased in particular in the areas of enforcement and compliance, and in relation to track safety.</li> </ul>

		<ul style="list-style-type: none"> <li>• Taxation of physical greyhound racing should be equalised with the taxation for computer-simulated racing events to incentivise a movement to ethical practices.</li> </ul>
2.3	If the Commission's planning and reporting obligations are sufficient	<ul style="list-style-type: none"> <li>• The Commission's reporting obligations should be expanded to ensure greater transparency and pave the way for greater accountability within the industry.</li> <li>• In particular, the Commission should introduce whole-of-life tracking for all greyhounds, and report the full details of any positive drug tests, including the names of the greyhound, the owner and the trainer.</li> </ul>
<b>SECTION 3: GREYHOUND RACING IN NSW</b>		
3.1	If GRNSW's objectives and functions are appropriate and being actioned effectively	GRNSW's objectives and functions are not appropriate, nor actioned effectively. The greyhound racing industry is an industry in which animal cruelty is inherent in its practices and outcomes. "Commercial viability" should be removed as a principal objective of the GRNSW, as it is at odds with supporting the welfare of greyhounds and maintaining public trust in the industry.
3.2	If the use of an Operating License is appropriate	While an Operating Licence allows the government to regulate conditions for the operation of the greyhound racing industry, additional specifications in the Operating Licence are required.
3.3	If GRNSW's planning and reporting obligations are sufficient	While it is a positive improvement for the industry that GRNSW is required to adhere to planning and reporting obligations, an increase in such obligations is necessary in order to improve the transparency and accountability of GRNSW.
<b>SECTION 4: PROVIDING FOR THE WELFARE OF GREYHOUNDS</b>		
4.1	If animal welfare offences are contributing positively to behaviour change in the industry	Appropriate enforcement is required to deter offenders within the greyhound racing industry, as the existence of animal welfare offences alone does little to achieve this.

4.2	If the range of penalties and offences are practical and effective at deterring bad behaviour or if they can be improved	While the existing regime does provide an inadequate deterrent effect, the primary focus should be upon maximising the detection and prosecution of offences.
4.3	If the Commission's investigative and enforcement powers are sufficient to effectively regulate the industry	The Commission's overarching approach to its role appears to be insufficient in practice. The role of the Commission ought to be more akin to that adopted by other bodies under the POCTA in which the role is focused on providing oversight, transparency, and enforcement.
<b>SECTION 5: REGULATION OF GREYHOUND RACING</b>		
5.1	If the licensing and registration scheme is effective to regulate participants	The Committee recognises that the amended registration scheme has introduced positive changes that should be effective in regulating participants. However, there needs to be better access to comparative data in order to assess the effectiveness of the changes.
5.2	If investigatory powers in the Act are effective	While it is too early to determine whether the powers are effective, it is recognised that the current broad range of investigatory powers is a positive step for improving greyhound welfare. The Committee strongly supports the Commission being an authorised body that can directly register greyhounds on the Compliance Animals Register.
5.3	If you think the disciplinary measures in the Act are appropriate	<ul style="list-style-type: none"> <li>• There needs to be a more proactive application of the disciplinary measures by the Commission if they truly intend to deter participants from committing offences.</li> <li>• There should be stronger disciplinary actions, especially for animal cruelty offences that would also constitute a breach of the POCTA and warrant penalties and imprisonment.</li> </ul>

## Discussion

### 1. SCOPE OF THE GREYHOUND RACING ACT 2017

#### 1.1. If the Act has been effective at achieving its aims

The Greyhound Racing Act 2017 (NSW) (**GR Act**) does not state its objectives, but the Discussion Paper states that “the key aim of the Act is to set the foundations and governance arrangements for a sustainable greyhound racing industry with high standards of animal welfare and integrity”.<sup>1</sup> In the Committee’s view, these aims operate at cross-purposes, and animal welfare and integrity standards are not being met.

Given the short period since the GR Act has been in force, it is difficult to comment on the effectiveness of the GR Act in improving the standards of animal welfare and integrity. Nevertheless, the Committee is not satisfied that the data published in the Discussion Paper or the annual reports of Greyhound Racing NSW (**GRNSW**) reflects an overall improvement in greyhound welfare.

While the Discussion Paper attributes the reduction of greyhound breeding since 2013 to the efficacy of the GR Act, the initial drop in numbers is likely due to the immediate industry reaction to the GR Act and public denouncement following the Four Corners exposé in 2015.<sup>2</sup> The number of greyhounds being bred has since increased by 22% from 3,056 in 2016/2017 to 3,747 in 2018/2019.<sup>3</sup> More time is needed to observe whether this upward trend continues to grow after the industry stabilises. A more telling statistic is that the number of greyhounds bred each year continues to exceed the number of successfully rehomed greyhounds.<sup>4</sup>

The issue of the injury and death of racing greyhounds continues to be of great concern. The industry continues to report unnecessary race-associated deaths and injuries each year, namely unnecessary euthanasia of injured greyhounds.<sup>5</sup> GRNSW have gone so far as to say that it considers death and injury inevitable, and made the comparison of greyhound racing to that of sporting injuries such as football.<sup>6</sup> Noting the non-consent of greyhounds in racing, there is also no indication by GRNSW on the extent to which it aims to reduce rates of death and injury in order to improve the overall welfare of greyhounds. The establishment of the GRNSW Race Injury Rebate Scheme is one example of how GRNSW funds a reactive measure to animal welfare, rather than a proactive one.<sup>7</sup> The Committee submits that this demonstrates non-committal efforts to improve greyhound welfare.

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<sup>1</sup> Discussion Paper, 5.

<sup>2</sup> “But as a result of the Four Corners Revelation, breeding (of greyhounds) dropped dramatically across the country by 60%” - Rachel Riga, ‘Greyhounds still killed in the hundred as government and industry accused of dragging feet on reforms’ *ABC News*, (Australia 24 November 2018).

<sup>3</sup> Discussion Paper, 17; Paige Cockburn, ‘Greyhounds still disappearing in NSW as Integrity Commission tries to seal cracks’ *ABC News* (Australia, 22 February 2020).

<sup>4</sup> Paige Cockburn, ‘Greyhounds still disappearing in NSW as Integrity Commission tries to seal cracks’, *ABC News* (Australia, 22 February 2020).

<sup>5</sup> Greyhound Welfare and Integrity Commission, ‘Analysis of Greyhound Racing Injuries 1 January 2020 - 31 March 2020’, [https://www.gwic.nsw.gov.au/\\_data/assets/pdf\\_file/0016/301453/GWIC-Race-Injury-Report-Q1-2020.pdf](https://www.gwic.nsw.gov.au/_data/assets/pdf_file/0016/301453/GWIC-Race-Injury-Report-Q1-2020.pdf).

<sup>6</sup> Jem Nash, ‘Greyhound racing | Industry responds to condemnation after dog dies in Moree’, *Northern Daily Leader* (Australia, 6 December 2019).

<sup>7</sup> Discussion Paper, 20; Greyhound Welfare and Integrity Commission, ‘Race Injury Rebate Scheme’ (Webpage) <<https://www.gwic.nsw.gov.au/welfare/injury-rebate-scheme>>.

Similarly, in 2017, GRNSW funded an expert report undertaken by the University of Technology, Sydney, regarding track safety (**UTS Track Safety Report**) addressing safety concerns.<sup>8</sup> The UTS Track Safety Report also made several recommendations, including limiting the number of greyhounds on the same track at one time and using straight tracks only.<sup>9</sup> GRNSW has not implemented these recommendations. Although the GR Act states that GRNSW is to develop safety standards for racecourses,<sup>10</sup> it is not clear what outcomes those standards need to achieve. The Committee submits that the GR Act itself does not incentivise GRNSW to enforce proactive and effective changes to improve the welfare standards of greyhounds.

## 1.2. If the governance arrangements for the industry are appropriate

The GR Act enables GRNSW to fund the independent Greyhound Welfare and Integrity Commission (**Commission**) through industry revenues. The Committee submits this is appropriate as the welfare of greyhounds should be funded by greyhound racing participants. However, the regulatory system has limitations.

The Commission is intended to “promote and protect the welfare of greyhounds, safeguard the integrity of greyhound racing and breeding, and maintain public confidence in the greyhound racing industry”<sup>11</sup> by applying sanctions to industry participants. However it is unclear what mechanisms the Commission is able to apply to result in positive systemic changes to greyhound welfare within the greyhound industry as a whole. By way of example, since the Commission established the Race Injury Review Panel on 8 February 2019, the panel has prepared two reports analysing catastrophic injuries and major injuries.<sup>12</sup> It has successfully identified strategies to reduce incidents and severity of injuries, referring to the UTS Track Safety Report, but the Commission does not have powers to enforce its recommendations following inquiries, nor can it direct GRNSW to use its revenue to fund these changes.<sup>13</sup>

The Greyhound Industry Animal Welfare Committee (**GIAWC**) assisted the Commission to create an enforceable Code of Practice which will come into effect on 1 January 2021. It remains to be seen how this code will be enforced on the industry as a whole.

Provisions such as “all training facilities, trial tracks and equipment used in the training, trialling and racing of greyhounds must be appropriately constructed, maintained, and fit for purpose”<sup>14</sup> provide too much room for interpretation by participants and the industry and not sufficiently specific to implement the recommendations flagged by the Commission and GIAWC.

Overall, the Greyhound Racing Regulation 2019 (NSW) and the Greyhound Code of Practice is a positive addition to the governance instruments to support the application of the GR Act.

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<sup>8</sup> University of Technology Sydney, Identifying optimal racetrack design for greyhound safety and welfare - Phase 1 Report 1 January 2016 - 31 December 2016.

<sup>9</sup> University of Technology Sydney, Identifying optimal racetrack design for greyhound safety and welfare - Phase 1 Report 1 January 2016 - 31 December 2016.

<sup>10</sup> *Greyhound Racing Act 2017* (NSW), s 24(1)(d).

<sup>11</sup> Discussion Paper, 7.

<sup>12</sup> Greyhound Welfare and Integrity Commission, Race Injury Review Panel analysis and recommendations 8 February 2019 - 30 June 2019; and Race Injury Review Panel analysis and recommendations 1 July 2019 - 31 December 2019.

<sup>13</sup> Instead, GRNSW has relied on the NSW government Capital Grants Program to fund upgrades to track facilities.

<sup>14</sup> NSW Government, 'NSW Greyhound Code of Practice, May 2020' published July 2020.

## 2. THE GREYHOUND WELFARE AND INTEGRITY COMMISSION

### 2.1. If the Commission's legislative objectives and functions are appropriate and being actioned effectively

The Commission's legislative objectives and functions relating to the welfare of greyhounds, both on and off the tracks, are neither appropriate, nor effectively actioned.

#### On-track greyhounds

The Commission's objectives and functions are not met and are not actioned adequately when considering greyhound safety while racing and the design of greyhound racing tracks.

In 2017, the Greyhound Industry Reform Panel recommended that the GRNSW develop new track design and safety standards following the release of UTS Track Safety Report.<sup>15</sup> GRNSW agreed to prioritise the safety of NSW tracks.<sup>16</sup> The Commission must approve track standards,<sup>17</sup> and retain the "capacity to intervene in track design and safety standards if they do not prove effective in reducing the rate of and severity of greyhound racing injuries."<sup>18</sup> The UTS Track Safety Report researched recommendations to significantly reduce the likelihood of on-track injuries, as follows:

- a) developing purpose-built straight tracks;<sup>19</sup>
- b) installing an extended lure system;<sup>20</sup> and
- c) reducing the number of starts per race from 8 to 6.<sup>21</sup>

These recommendations have not been integrated by the GRNSW, nor required to be integrated by the Commission.

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<sup>15</sup> Greyhound Industry Reform Panel, *Recommendations of the Greyhound Industry Reform Panel* (Report, February 2017) 52.

<sup>16</sup> Greyhound Racing NSW, *GRNSW Strategic Plan 2018 – 2021* (Report, 2018) 27.

<sup>17</sup> *Greyhound Racing Act 2017* (NSW) s 26(6).

<sup>18</sup> Greyhound Industry Reform Panel, *Recommendations of the Greyhound Industry Reform Panel* (Report, February 2017) 52.

<sup>19</sup> University of Technology, *Identifying optimal greyhound track design for greyhound safety and welfare* (Report, 5 June 2017) [6.15].

<sup>20</sup> University of Technology, *Identifying optimal greyhound track design for greyhound safety and welfare* (Report, 5 June 2017) [6.26].

<sup>21</sup> University of Technology, *Identifying optimal greyhound track design for greyhound safety and welfare* (Report, 5 June 2017) [6.64].



According to the Commission’s most recent Analysis of Greyhound Racing Injuries Report extracted below, on-track injuries over the last year since 1<sup>st</sup> Quarter 2019 have been within the range of 15-17.6% of raced greyhounds.<sup>22</sup>

**Table 3: Greyhound injury numbers and rates over 15 months**

Injury category	Quarter 1 2019			Quarter 2 2019			Quarter 3 2019			Quarter 4 2019			Quarter 1 2020		
	Number	Per 100 raced	Per 1000 starts	Number	Per 100 raced	Per 1000 starts	Number	Per 100 raced	Per 1000 starts	Number	Per 100 raced	Per 1000 starts	Number	Per 100 raced	Per 1000 starts
Minor*	247	6.7%	14.1	303	8.4%	15.0	343	9.1%	16.9	320	8.0%	15.7	<b>242</b>	<b>6.6%</b>	<b>13.0</b>
Medium	207	5.6%	11.8	154	4.3%	7.6	161	4.3%	7.9	233	5.9%	11.4	<b>183</b>	<b>5.0%</b>	<b>9.8</b>
Major I	84	2.3%	4.8	71	2.0%	3.5	76	2.0%	3.7	84	2.1%	4.1	<b>73</b>	<b>2.0%</b>	<b>3.9</b>
Major II	27	0.7%	1.5	41	1.1%	2.0	34	0.3%	1.7	45	1.1%	2.2	<b>37</b>	<b>1.1%</b>	<b>2.0</b>
Catastrophic	33	0.9%	1.9	17	0.5%	0.8	12	0.5%	0.6	15	0.4%	0.7	<b>15</b>	<b>0.4%</b>	<b>0.8</b>
<b>Total</b>	<b>598</b>	<b>16.2%</b>	<b>34.1</b>	<b>586</b>	<b>16.2%</b>	<b>29.1</b>	<b>627</b>	<b>16.6%</b>	<b>30.9</b>	<b>697</b>	<b>17.6%</b>	<b>34.2</b>	<b>550</b>	<b>15.0%</b>	<b>29.5</b>

SOURCE: NSW Greyhound Welfare & Integrity Commission, *Analysis of Greyhound Racing Injuries 1 January 2020 – 31 March 2020* (Report, March 2020) 6.

Evidence obtained under Freedom of Information laws show that 40% of racing greyhounds die in NSW from on-track injury or euthanasia.<sup>23</sup> In total 110 greyhounds were euthanised as they were either deemed unsuitable for re-homing or were unsuccessfully re-homed and a further 390 were euthanised by a vet, including 75 due to an on-track injury.<sup>24</sup> According to the Coalition for the Protection of Greyhounds, there were 25 track-related greyhound deaths and 1,345 track related injuries in NSW between January and June 2020 alone.<sup>25</sup>

These alarming statistics demonstrate that the Commission is not adequately implementing on-track adjustments to advance and protect the welfare of racing greyhounds.

### Off-track greyhounds

The Commission’s objectives include the “promot[ion] and protect[ion] [of] the welfare of greyhounds” and the functions include “initiating, developing and implementing policies relating to the welfare of greyhounds”. The Committee submits that the Commission’s objectives and functions are not effectively actioned as they do not promote and protect the welfare of all greyhounds.

<sup>22</sup> NSW Greyhound Welfare & Integrity Commission, *Analysis of Greyhound Racing Injuries 1 January 2020 – 31 March 2020* (Report, March 2020) 6.

<sup>23</sup> Brad Esposito, ‘Almost 40% of NSW Racing Greyhounds Are Leaving The Industry Dead’, 2 May 2019, <<https://www.pedestrian.tv/news/almost-40-of-nsw-racing-greyhounds-are-leaving-the-industry-dead/>>.

<sup>24</sup> Ibid.

<sup>25</sup> Coalition for the Protection of Greyhounds, *2020 Track Deaths and Injuries*, (Web Page, August 2020) <<http://greyhoundcoalition.com/2020-track-deaths-and-injuries/>>.

According to the Act, a greyhound is defined as “a greyhound that is owned or kept in connection with greyhound racing.”<sup>26</sup> Consequently, “greyhound racing industry participants”<sup>27</sup> can transfer ownership of a greyhound to someone outside the industry, and the Commission no longer has power over that greyhound. This effectively creates a loophole through which industry participants can avoid rehoming and care obligations through ownership transferral. Once a greyhound is no longer owned by an industry participant, rehoming obligations no longer apply and the owner is not required to inform the Commission if they euthanise the greyhound. This issue has been highlighted by several organisations – including Humane Society International, Australian Ethical, and the Coalition for the Protection of Greyhounds<sup>28</sup> – and it remains of significant concern to the Committee, as highlighted by previous submissions prepared by the Committee.<sup>29</sup> This issue also influences the capacity of the Commission to fulfil the functions of “undertaking research and investigation into...greyhound racing generally” and “investigating animal welfare and integrity concerns”. The Commission does not have the power to investigate, track, or inspect any transferred greyhounds. Consequently, the reporting is likely to be inaccurate, making it difficult for the Commission to properly assess poor animal welfare practices and outcomes. The definition also significantly reduces the capacity for GRNSW to face external public scrutiny and accountability, which is imperative to ensuring adequate animal welfare standards are met.

The Committee recommends that there should be whole-of-life tracking for all greyhounds to ensure that industry participants cannot avoid rehoming and care obligations through ownership transferral, enable the Commission to ensure that the greyhounds are being cared for adequately, and enable the public to access information regarding greyhound euthanasia.

## **2.2. If the current funding arrangements for the industry are appropriate**

The Committee submits that animal welfare funding is inadequate, and that current taxation legislation fails to incentivise a movement to ethical practices. Animal welfare funding needs should be increased in the areas discussed below.

### Enforcement and compliance

Currently, around 14% of the Commission’s expenditure is on compliance and enforcement, and 10% is on prohibited substances detection.<sup>30</sup> During 2018/2019, the Commission investigated and charged only 37 participants.<sup>31</sup> Half of these charges were in relation to prohibited substances or animal welfare matters.<sup>32</sup> The

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<sup>26</sup> *Greyhound Act 2017* s 3(1).

<sup>27</sup> *Greyhound Act 2017* s 3(1).

<sup>28</sup> Humane Society International, Submission to NSW Department of Industry, *Proposed Greyhound Racing Regulation 2019* (18 July 2019); Australian Ethical, Submission to NSW Department of Industry, *Proposed Greyhound Racing Regulation 2019* (18 July 2019); Coalition for the Protection of Greyhounds, Submission to NSW Department of Industry, *Proposed Greyhound Racing Regulation 2019* (July 2019).

<sup>29</sup> For example, Submission on the Greyhound Racing Regulation 2019 dated 19 July 2019, available at:

[https://www.lawsociety.com.au/sites/default/files/2019-08/20190719\\_Animal\\_Law\\_Committee\\_Submission\\_on\\_the\\_Greyhound\\_Racing\\_Regulation\\_2019.pdf](https://www.lawsociety.com.au/sites/default/files/2019-08/20190719_Animal_Law_Committee_Submission_on_the_Greyhound_Racing_Regulation_2019.pdf).

<sup>30</sup> Office of Racing, *Greyhound Racing Act 2017 Statutory Review* (Discussion Paper, July 2020) 12.

<sup>31</sup> NSW Greyhound Welfare & Integrity Commission, *Annual Report 2018-2019* (Report, 24 October 2019) 28.

<sup>32</sup> NSW Greyhound Welfare & Integrity Commission, *Annual Report 2018-2019* (Report, 24 October 2019) 28.

low number of investigations and charges is concerning considering that racing greyhounds have also been found to be ten times more likely than horses to test positive for drugs.<sup>33</sup>

#### Reform development and implementation - track safety and whole-of-life tracking

Currently, around 4% of the Commission's expenditure is on reform development and implementation.<sup>34</sup> As submitted above, more funding should be directed to track safety in order to address the high rates of on-track greyhound injury and death. In particular, the Commission ought to intervene in relation to GRNSW track policies to incorporate the recommendations highlighted by the UTS Track Safety Report referred to above.<sup>35</sup>

#### Taxation

The Committee recommends that taxation of physical greyhound racing be equalised with the taxation for computer-simulated racing events. The relevant taxation for physical greyhound racing on or after July 2020 is 4.38%.<sup>36</sup> In contrast, the relevant taxation for computer-simulated racing event betting is 10.91%.<sup>37</sup> Higher levels of taxation for computer-simulated racing as compared to taxation for physical greyhound racing means that gambling industry participants are not incentivised to move towards more ethical practices.

### **2.3. If the Commission's planning and reporting obligations are sufficient**

The Committee submits that the Commission's reporting obligations are currently insufficient. A lack of reporting creates significant issues for accountability and public scrutiny. This is particularly significant when considering the amount of money the industry receives from the public. Accordingly, reporting ought to be expanded to ensure greater transparency and pave the way for greater accountability within the industry.

The Commission expanded its reporting commitments with the *Greyhound Racing Regulation 2019* (NSW). Currently the Commission creates four key reports: Breeding and Whelping, Injury Report, Race Injury Review Panel Report and Retirement and End of Life Report. While this increase in reporting is beneficial, there remains significant areas that are unreported, and accordingly the Committee recommends:

- a) Whole-of-life tracking for all greyhounds, as set out in Section 2.1 above; and
- b) The Commission report the full details of any positive drug tests, including the names of the greyhound, the owner and the trainer. This has been supported by the Humane Society International, The Greens and Australian Ethical.<sup>38</sup>

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<sup>33</sup> Nigel Gladstone, 'Greyhounds test positive for drugs 10 times more than horses at races', 6 May 2018, <<https://www.smh.com.au/national/nsw/greyhounds-test-positive-for-drugs-10-times-more-than-horses-at-races-20180425-p4zbnj.html>>.

<sup>34</sup> Office of Racing, *Greyhound Racing Act 2017 Statutory Review* (Discussion Paper, July 2020) 12.

<sup>35</sup> University of Technology, *Identifying optimal greyhound track design for greyhound safety and welfare* (Report, 5 June 2017) [6.15], [6.26], [6.64].

<sup>36</sup> *Betting Tax Act 2001* (NSW) s 10(2A)(a)(v).

<sup>37</sup> *Betting Tax Act 2001* (NSW) s 10(2A)(b).

<sup>38</sup> Humane Society International, Submission to NSW Department of Industry, *Proposed Greyhound Racing Regulation 2019* (18 July 2019); Australian Ethical, Submission to NSW Department of Industry, *Proposed Greyhound Racing Regulation 2019* (18 July 2019); The Greens, Submission to NSW Department of Industry, *Proposed Greyhound Racing Regulation 2019* (10 July 2019); NSW Young Lawyers Animal Law Committee, Submission to NSW Department of Industry, *Proposed Greyhound Racing Regulation 2019* (19 July 2019).

### 3. GREYHOUND RACING IN NSW

#### 3.1. If GRNSW's objectives and functions are appropriate and being actioned effectively

The Committee submits that GRNSW's objectives and functions are not appropriate, nor actioned effectively. As highlighted by the Special Commission of Inquiry into the Greyhound Racing Industry in NSW<sup>39</sup> (**2016 Special Commission of Inquiry**), the greyhound racing industry is an industry in which animal cruelty is inherent in its practices and outcomes. Accordingly, it should not prioritise commercial objectives and functions.

The legislated objectives and functions of GRNSW focus on ensuring that greyhound racing in NSW continues to trade in a profitable and commercially viable manner.<sup>40</sup> Although GRNSW is also required to "exhibit social responsibility by supporting the welfare of greyhounds", this objective directly conflicts with GRNSW's function to "initiate, develop and implement policies conducive to the promotion, strategic development and commercial viability of the greyhound racing industry."<sup>41</sup> The Committee recommends that this function be replaced with "promote greyhound racing in the State as a competitive and sustainable industry with a high level of public trust," which is an objective of the Act, and is consistent with supporting the welfare of greyhounds.

#### 3.2. If the use of an Operating License is appropriate

While an Operating Licence allows the government to regulate conditions for the operation of the greyhound racing industry, the Committee submits that additional specifications in the Operating Licence are required. A major concern is the significant amount of autonomy granted to GRNSW to meet its commercial objectives.

The Operating Licence was granted to NSW in 2017 for a term of five years. While it is unclear what conditions are specified in the Operating Licence as required by the GR Act, the Committee notes that it does not provide the necessary rigorous requirements for GRNSW's activities to ensure that animal welfare is safeguarded. Noting the findings relating to the concealment of animal cruelty by GRNSW,<sup>42</sup> an Operating Licence which provides high-level compliance requirements is not appropriate.

The Committee submits that the Operating Licence should:

- a) provide detailed specifications as to the manner in which GRNSW is to operate, with particular emphasis placed on minimising animal cruelty practices;
- b) include a review trigger relating to any significant incidents relating to animal cruelty in the industry; and
- c) reducing the term of the Operating Licence from five years to a maximum of three years.

#### 3.3. If GRNSW's planning and reporting obligations are sufficient

While it is a positive improvement for the industry that GRNSW is required to adhere to planning and reporting obligations, the Committee submits that an increase in such obligations is necessary in order to improve the transparency and accountability of GRNSW, as follows:

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<sup>39</sup> Commissioner McHugh AC QC, *Report of the Special Commission of Inquiry into the Greyhound Racing Industry in NSW* (6 June 2016) (Vol 3).

<sup>40</sup> *Greyhound Racing Act 2017* (NSW) ss 23-24.

<sup>41</sup> *Greyhound Racing Act 2017* (NSW) s24(h).

<sup>42</sup> *Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales* (2016), Volume 1, 1.60.

- a) GRNSW should be required by its Operating Licence to make its reporting obligations available to the public on its website.
- b) GRNSW should provide data and information collected with respect to the 'whole-of-life' tracking of greyhounds, on an annual basis, and in a manner which clearly identifies the number of greyhounds unaccounted for.
- c) The exporting of greyhounds overseas should be reported by GRNSW where there is data available. The Committee recommends that this information be publicly available by GRNSW in both its Annual Report, and accessible via its website. The GRNSW should report this information due to the absence of animal protection laws in some importing countries, and the potential to enter greyhounds into the dog meat trade.
- d) There should be increased transparency and provision of information in relation to GRNSW's rehoming initiatives, including information relating to the number of greyhounds provided to the Greyhound Adoption Program NSW for assessment for the program, highlighting the number of greyhounds rejected from the program, the reasons for rejection, and the number of those greyhounds that are euthanised unnecessarily as a result.
- e) GRNSW should regularly report on its implementation of racing safety on NSW greyhound racing tracks, and any impact of these measures in comparison with the percentage decrease in greyhound injuries reported by the Commission.
- f) Systems and processes should be implemented to ensure the robustness and transparency of the data gathered and reported by GRNSW. An independent third party should conduct a regular audit of the data and information to ensure the reliability of the information provided by GRNSW, and to minimise reliance on self-reporting.

#### **4. PROVIDING FOR THE WELFARE OF GREYHOUNDS**

##### **4.1. If animal welfare offences are contributing positively to behaviour change in the industry**

The availability of animal welfare offences pre-dates the 2017 implementation of the GR Act.<sup>43</sup> Accordingly, the controversies that gave rise to the introduction of the GR Act were happening despite the legislation of animal welfare offences. It follows that the existence of animal welfare offences alone does little to deter offenders within the greyhound racing industry, without appropriate enforcement.

##### **4.2. If the range of penalties and offences are practical and effective at deterring bad behaviour or if they can be improved**

The Committee has, in the past year, identified that the scope of penalties attached to animal welfare offences in NSW is inadequate – a reality observed by the legislature itself.<sup>44</sup>

Notwithstanding the difficulty of assessing legislative impact over the three-year period since the introduction of the GR Act, the Committee submits that the present regime is not sufficiently deterring offenders, with egregious instances of animal abuse continuing to occur. By way of example, one case in 2018 saw the

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<sup>43</sup> The *Prevention of Cruelty to Animals Act 1979* (NSW) has now been in operation for over forty years.

<sup>44</sup> See, for example, The Law Society of NSW Young Lawyers, *Submission in response to the NSW Animal Welfare Reform - Issues Paper* (26 June 2020) p 25, where the Issues Paper for the review is also cited: "The Issues Paper highlights a number of inadequacies in the penalties under the NSW animal welfare regime".

discovery of nine malnourished and emaciated greyhounds and, on the same property, a mass grave of nine more greyhounds in Western Sydney.<sup>45</sup>

It is for this reason that the Committee submits that more needs to be done to deter offenders, up to and including the imprisonment of those who continue to engage in abuse within the greyhound racing industry.

However, in the Committee's view the real weakness in the enforcement regime is not in the penalties theoretically available (which already include imprisonment), but in the practical enforcement of the offence provisions of the GR Act and the *Prevention of Cruelty to Animals Act 1979* (NSW) (**POCTA**). That is, while the Committee is of the view that the penalties being imposed upon offenders often does not reflect the objective seriousness of their conduct, the Committee considers the primary focus should be on maximising the detection and prosecution of offences, so as to provide both specific and general deterrence to discourage offending in the first place..

As addressed elsewhere in this submission, it is the Committee's view that the current regulatory regime in the greyhound racing industry is not appropriately structured to prioritise the enforcement of animal welfare laws over commercial objectives. That must change, and robust monitoring requirements should be imposed, if the detection and deterrence of offending is to be maximised.

#### **4.3. If the Commission's investigative and enforcements powers are sufficient to effectively regulate the industry**

The Commission's overarching approach to its role appears to be insufficient in practice. The Committee submits that the role of the Commission ought to be more akin to that adopted by charitable organisations such as the RSPCA or Animal Welfare League under the POCTA in which the role is focused on providing oversight, transparency, and enforcement.

In the Committee's view, limitations on the scope of the investigative powers of the Commission addressed earlier in this submission,<sup>46</sup> compromise the efficacy of the Commission.

## **5. REGULATION OF GREYHOUND RACING**

### **5.1. If the licensing and registration scheme is effective to regulate participants**

The Committee recognises that the amended registration scheme has introduced positive changes that should be effective in regulating participants. However, the lack of access to comparative data makes it difficult to assess the effectiveness of the changes.

Before the 2017 changes, a major deficiency identified in the 2016 Special Commission of Inquiry was the lack of a clear definition of a greyhound racing participant.<sup>47</sup> The 2017 and 2019 amendments have clarified and expanded the number of persons captured under this definition.<sup>48</sup> Further, it now allows the Commission and

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<sup>45</sup> Rachel Clun, 'RSPCA uncover greyhound mass grave in western Sydney' *The Sydney Morning Herald* (online, 12 July 2018) <<https://www.smh.com.au/national/nsw/rspca-uncover-greyhound-mass-grave-in-western-sydney-20180712-p4zr03.html>>

<sup>46</sup> See also the narrowed definition of "greyhound" under s 3 of the *Greyhound Racing Act 2017*.

<sup>47</sup> Commissioner McHugh AC QC, *Report of the Special Commission of Inquiry into the Greyhound Racing Industry in NSW* (6 June 2016) (Vol 3) <<https://www.nsw.gov.au/sites/default/files/2020-07/Special-commission-of-inquiry-into-greyhound-racing-industry-in-nsw-volume%203.pdf>> 23.27.

<sup>48</sup> Discussion paper, 23.



GRNSW to have control over these registrations, by setting conditions and requirements that participants must satisfy to obtain registration.<sup>49</sup>

In the Discussion Paper, there are references to participants registered as at 1 September 2019.<sup>50</sup> There is also mention of disciplinary and registration decisions between 2018 and 2019.<sup>51</sup> On its website, the Commission has also published a media release about a life ban they issued on a racing participant, for animal cruelty.<sup>52</sup> However, to be able to measure the effectiveness of these changes in regulating participants, the Committee seeks an overall comparison of statistics before and after the legislative changes. For example, the statistics should capture the following:

- a) how many participants have been registered and licenced and under which categories;
- b) how many participants have had conditions imposed on their licences or registration, or suspensions or cancellations of registration;
- c) how many penalties or fines have been issued to each participant; and
- d) the number of offences under POCTA or the GR Act and the outcomes of those prosecutions.

Importantly, the GR Act is said to ‘improve transparency’,<sup>53</sup> but for this to occur, the general public must have ongoing access to regularly collected data.

## **5.2. If investigatory powers in the Act are effective**

While it is too early to determine whether the powers are effective, the Committee recognises that the current broad range of investigatory powers is a positive step for improving greyhound welfare.

It was noted in early 2020 on the Commission’s official site that it was “currently in the process of becoming an authorised body that can directly register greyhounds on the Compliance Animals Register”.<sup>54</sup> The Committee strongly supports the implementation of this initiative, to provide the Commission with greater ability to confirm the ‘legitimacy of the transfer’ and enforce their Rehoming Policy.<sup>55</sup>

## **5.3. If you think the disciplinary measures in the Act are appropriate**

Although disciplinary actions and sanctions of lifetime banning and fines up to \$22,000 are available, the Committee submits that the use of disciplinary measures are not being used to the extent they should be. By way of example, there were two charges relating to animal welfare since 1 January 2018 where both participants were disqualified for life without the issue of a fine.<sup>56</sup> One was in relation to failure to provide veterinary attention, kennel, food, drink and protective apparel,<sup>57</sup> and the other with respect to breaches of

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<sup>49</sup> Discussion paper, 24.

<sup>50</sup> Discussion paper, 25.

<sup>51</sup> Discussion paper, 25.

<sup>52</sup> GWIC, *Commission Issues Life Ban for animal cruelty* (19 May 2020)

<[https://www.gwic.nsw.gov.au/\\_data/assets/pdf\\_file/0020/301853/Media-Statement-Commission-issues-life-ban-for-animal-cruelty.pdf](https://www.gwic.nsw.gov.au/_data/assets/pdf_file/0020/301853/Media-Statement-Commission-issues-life-ban-for-animal-cruelty.pdf)>

<sup>53</sup> Discussion paper, 7.

<sup>54</sup> ‘Letter to the Editor – Mr Bernard Keane, crikey.com.au’ *Greyhound Welfare and Integrity Commission* (Webpage)

<[https://www.gwic.nsw.gov.au/\\_data/assets/pdf\\_file/0008/288170/Letter-to-the-editor.pdf](https://www.gwic.nsw.gov.au/_data/assets/pdf_file/0008/288170/Letter-to-the-editor.pdf)>

<sup>55</sup> Ibid.

<sup>56</sup> ‘Final Disciplinary Action Decisions’ *Greyhound Welfare and Integrity Commission* (Webpage)

<<https://www.gwic.nsw.gov.au/integrity/disciplinary-decisions>>.

<sup>57</sup> Greyhound Welfare and Integrity Commission, ‘Disciplinary Action Decision: Mr Byron Miller’ (27 September 2019)

<[https://www.gwic.nsw.gov.au/\\_data/assets/pdf\\_file/0015/280113/GWIC-Disciplinary-Action-Decision-Miller-1.pdf](https://www.gwic.nsw.gov.au/_data/assets/pdf_file/0015/280113/GWIC-Disciplinary-Action-Decision-Miller-1.pdf)>.

Prevention of Cruelty to Animals Act<sup>58</sup> in both NSW and Victoria.<sup>59</sup> In fact, the greatest fine issued to date has been \$5,000 which was in response to a participant using offensive language towards a Club Official and a steward.<sup>60</sup>

As discussed in Section 4.2 above, there needs to be a more proactive application of the disciplinary measures by the Commission if they truly intend to deter participants from committing offences. The Committee recommends stronger disciplinary actions, especially for animal cruelty offences that would also constitute a breach of the POCTA and warrant penalties and imprisonment.

The Committee submits that there should be disciplinary measures in place to reduce over-breeding and unnecessary euthanasia in the industry, particularly given the concerns raised in the 2016 Special Commission of Inquiry.<sup>61</sup>

## Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission.

If you have any queries or require further submissions, please contact the undersigned at your convenience.

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<sup>58</sup> Prevention of Cruelty to Animals Act 1979 (NSW). Prevention of Cruelty to Animals Act 1986 (Vic).

<sup>59</sup> Greyhound Welfare and Integrity Commission, 'Disciplinary Action Decision: Mr Shane Poison ' (6 May 2020) <[https://www.gwic.nsw.gov.au/\\_data/assets/pdf\\_file/0011/297119/GWIC-Disciplinary-Decision-Polson.pdf](https://www.gwic.nsw.gov.au/_data/assets/pdf_file/0011/297119/GWIC-Disciplinary-Decision-Polson.pdf)>.

<sup>60</sup> Greyhound Welfare and Integrity Commission, 'Disciplinary Action Decision: Mr Shane Stiff ' (9 June 2020) <[https://www.gwic.nsw.gov.au/\\_data/assets/pdf\\_file/0020/309620/GWIC-Disciplinary-Action-Decision-Stiff.pdf](https://www.gwic.nsw.gov.au/_data/assets/pdf_file/0020/309620/GWIC-Disciplinary-Action-Decision-Stiff.pdf)>.

<sup>61</sup> Special Commission of inquiry into the Greyhound Racing Industry in New South Wales, p46.