

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

**Report | Volume 1**

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16 June 2016

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ISBNs

Volume 1 978-1-922257-35-2 (print version)  
978-1-922257-34-5 (online version)

Volume 2 978-1-922257-37-6 (print version)  
978-1-922257-36-9 (online version)

Volume 3 978-1-922257-39-0 (print version)  
978-1-922257-38-3 (online version)

Volume 4 978-1-922257-41-3 (print version)  
978-1-922257-40-6 (online version)

Report of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales, 2016, 4 volumes.

Published 16 June 2016

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# Preface

This Report is the result of an extensive inquiry into the greyhound racing industry in New South Wales held under the *Special Commissions of Inquiry Act 1983* (NSW). The Inquiry was set up by the New South Wales government in February 2015. It followed the exposure by the *Australian Broadcasting Corporation's Four Corners* program of the horrific practice of live animals being used to train greyhounds and the resignation of the then members of the Board of Greyhound Racing New South Wales (GRNSW) and its Chief Executive Officer.

Term of Reference C6 of the Inquiry required the Commission to evaluate:

whether the issues [relating to the governance, integrity and animal welfare standards of the greyhound racing industry in NSW] are able to be appropriately addressed, to permit the continuation of a greyhound racing industry in NSW that is sustainable and provides an ongoing economic and social contribution to the State.

Consistent with the Terms of reference, the Inquiry was necessarily far-reaching. The Commission's investigations spread to almost every aspect of the greyhound racing industry in New South Wales and required the Commission to investigate aspects of the greyhound racing industry in other States of Australia and other countries. In the course of its Inquiry, the Commission received over 151,000 pages of evidence, 115 hours of videos, and 804 wide-ranging submissions (3,875 pages). The Commission also received 59 responses (628 pages) to breeding and social contribution and governance issues papers the Commission issued to obtain particular information from industry participants, representative organisations and members of the general public. In addition, the Commission examined 43 witnesses in 11 days of private hearings and 26 witnesses in 10 days of public hearings. It also considered the 1,143 submissions (3,455 pages) that were made to the NSW Parliamentary Select Committee in 2013 concerning the greyhound racing industry, and had the benefit of reading the two Reports issued by that Committee.

One of the difficulties the Commission faced in conducting the Inquiry was the continual changing of the regulation of the industry after February, 2015. Under the leadership of the new interim Chief Executive, GRNSW abandoned many former practices and introduced new policies and rules that regulated the industry. Throughout the Inquiry, the Commission regularly found itself in the position that, after investigating an aspect of the industry, GRNSW introduced new policies and rules regulating that particular aspect of the industry. In some cases these changes – although intended for the betterment of the industry – required the Commission to re-evaluate matters that it had already evaluated to some extent.

Given the burden facing the Commission to obtain and evaluate the vast mass of documentary evidence and submissions that it received, its task would have taken years for the Commission to complete without the able assistance that the Commission got from the dedicated team of lawyers, paralegals and staff members assisting it.

I especially thank Stephen Rushton, SC, and David Kell, who were counsel assisting the Commission, Ms Cheryl Drummy, special counsel for the Crown Solicitor, Ms Gillian Buchan, Senior Solicitor, Ms Marisa Wright Smith, Senior Solicitor, Mr Matthew Ashworth, Solicitor and Ms Isabella Partridge, Graduate Solicitor for their invaluable contributions to the conduct of the Inquiry including the preparation of this Report.

The Inquiry has also been greatly assisted by the work of the paralegals, Ms Lucinda Bozic, Mr Dion Carnell, Ms Cassandra Nelson, Mr Benjamin Ng, and Mr Jake Reid. Their work in undertaking research and document review (and assisting as my tipstaff during hearings) was of utmost assistance.

My special thanks to Ms Maria Lagoudakis, Executive Assistant, who played a key role in organising the massive documentation with which the Commission had to deal. My special thanks also to Ms Deborah Rana, secretary, for the support she provided to the secretariat.

Finally, I express my appreciation to all the persons and organisations whose participation or submissions on various aspects of the Inquiry have been of significant assistance. I record my thanks also to the persons and organisations, especially GRNSW and its interim Chief Executive Mr Paul Newson, who responded to the significant demands on them to produce material and answer questions, which greatly assisted the Commission in its inquiries.

# 1 Overview of the Special Commission of Inquiry

- 1.1 This chapter provides an overview of key aspects of the greyhound racing industry that the Commission considered.

## “Wastage”

- 1.2 The normal life expectancy of a greyhound is between 12 and 15 years. Over the last 12 years, 97,783 dogs were whelped in NSW. Currently, there are about 6,809 registered greyhounds. A greyhound is eligible to be registered when it is 12 months old. Absent death through misadventure or illness, the average life expectancy of a greyhound indicates that another 90,974 greyhounds should still be alive. Some pups that were whelped in the last 18 months may be within litters, being reared, broken in or in pre-race training and not registered. However, even assuming that none of these juvenile animals (approximately 10,253) has been destroyed, where are the remaining 80,721 greyhounds? What has happened to them?
- 1.3 The answer is that some of them will have found homes outside the greyhound racing industry or been exported interstate or to other countries, or retained by their owners as pets or breeders, or died of natural or accidental causes. But the evidence before the Commission indicates that at least 50% of those whelped - and perhaps up to 70% or even more of them - were deliberately killed simply because they never were, or no longer were, capable of being competitive racing greyhounds.
- 1.4 That is to say, of the 97,783 greyhounds that were bred in New South Wales in the last 12 years, the evidence suggests that somewhere between 48,891 and 68,448 dogs were killed because they were considered too slow to pay their way or were unsuitable for racing.
- 1.5 The evidence shows that 40% of those greyhounds whelped never make it to the race track. As one breeder stated, “Dogs who don’t have the instinct [to chase] or the tools to be a consistent winner - well a good handler can spot it a mile away ... Most of the time I’d drown the pups.”<sup>1</sup> In the greyhound industry, this mass slaughter of young and older greyhounds bred for the purpose of greyhound racing, and which are subsequently destroyed either prior to being named or raced, or upon retirement from racing, is euphemistically called “wastage” or euthanasia.
- 1.6 Term of Reference C6 of this Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales requires this Commission to evaluate:
- whether the issues [relating to the governance, integrity and animal welfare standards of the greyhound racing industry in NSW] are able to be appropriately addressed, to permit the continuation of a greyhound racing industry in NSW that is sustainable and provides an ongoing economic and social contribution to the State.
- 1.7 In the course of its Inquiry, the Commission has received and reviewed over 151,000 pages of documentary material, and over 115 hours of videos and other recordings, from widespread sources including greyhound racing industry participants and representative organisations,

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<sup>1</sup> Atkinson and Young, (2008) at 86 cited by the Australian Working Dog Alliance in “Review & Assessment of Best Practice, Rearing, Socialisation, Education & Training Methods for Greyhounds in a Racing Context.” Ex S (17-19 November 2015), p. 25.

welfare organisations and members of the general public. The Commission received 804 general submissions and 59 responses to issues papers it published seeking input from the industry and the public about the breeding of greyhounds, the social contribution of greyhound racing and governance of the industry in NSW.

- 1.8 In addition, the Commission examined 43 witnesses in 11 days of private hearings and 26 witnesses in 10 days of public hearings. The Commission has also considered the 1,143 submissions that were made to the NSW Parliamentary Select Committee in 2013 concerning the greyhound racing industry and had the benefit of reading the two Reports issued by the Select Committee in 2014.
- 1.9 After evaluating the relevant parts of this mass of material, the Commission has concluded that, unless the number of greyhounds being bred in this State is reduced by a very large number, the greyhound racing industry in NSW cannot solve its problem of the mass slaughtering of healthy greyhounds. The Commission has concluded that, unless the controlling body for the industry, Greyhound Racing New South Wales (“GRNSW”), is able to obtain such a reduction in numbers, it is unlikely to be able to govern the industry in a manner that can appropriately address what is, in effect, the mass slaughter of healthy greyhounds by or on behalf of industry participants.
- 1.10 That is to say, the body charged with the governance of the industry has not been able in the past, and is unlikely in the future, to “appropriately” address the problem of wastage. (The Commission has interpreted the term “governance” in the context of the terms of reference as meaning the manner or actions of governing the industry; and it has interpreted “appropriately” to mean “suitable or proper in the circumstances”.)
- 1.11 The Commission has no doubt that the present management of GRNSW is greatly concerned about wastage and will do everything it can to reduce its extent, but the task that GRNSW faces is, for practical purposes, insuperable.
- 1.12 The reason for this is that the industry in NSW presently needs and, without a dramatic reduction of the race meetings that it holds, will probably continue to need, 6,000 or more greyhounds to be whelped each year to maintain its racing schedules. However, the industry cannot, and will not be able to, find homes for somewhere between 50% and 70% of these dogs.
- 1.13 GRNSW examined the careers of 16,000 greyhounds and found that, on average, a racing greyhound in NSW has 24 starts during its career; a career which, on average, lasts for only 363 days. Greyhounds start racing when they are around 18 months of age. The racing career of the vast majority of them is over when they are 4.5 years old.
- 1.14 Apart from about 6% of the greyhounds whelped who have breeding value, the remaining dogs have no commercial value for the industry after their racing careers are over. Unless they are rehomed, they will probably be killed. As the Australian Working Dog Alliance (“the WDA”), consultants engaged by GRNSW to review and assess best practice in regards to rearing, socialisation, education and training methods for greyhounds in a racing context, has reported: “if they are unable to deliver financial rewards, their demise is probable.” Indeed, death at an early age is the likely fate of most of the dogs that never make it to the race track.
- 1.15 The difficulty facing the industry in relation to wastage is highlighted by GRNSW’s statement to the Commission that it needs 7,548 greyhounds to be whelped to meet a racing schedule similar to its racing schedule for the 2015-2016 financial year. That figure is slightly less than the average number of greyhound pups bred between 2009 and 2015 (7,598).
- 1.16 The number of starters required may be reduced in future years - GRNSW has put forward two scenarios that may reduce the number to greyhounds required to 6,054 or 6,317. The financial viability of the industry is dependent on the revenue derived from wagering on greyhound races.

Whether or not either of these scenarios eventuates - which the Commission thinks is doubtful - a large number of pups have to be whelped each year to maintain the industry's racing schedules.

- 1.17 Applying the 50% - 70% wastage percentages, of the 7,548 greyhounds that need to be bred for a racing schedule similar to this year, somewhere between 3,774 and 5,284 will be destroyed. If GRNSW succeeds in reducing the number of required greyhounds to 6,054, then 3,027 to 4,238 of them will be destroyed, the vast majority of them before they are 5 or 6 years old, perhaps even before they are 18 months old.
- 1.18 Despite the best intentions and plans of GRNSW, the economics of the industry will ensure that this cycle of birth, short period of racing (if at all), and destruction will continue for the foreseeable future.

## Rehoming

- 1.19 In recent years, GRNSW, like the controlling bodies of greyhound racing in other States and Territories, has attempted to reduce wastage rates - principally by the rehoming of greyhounds. The rehoming efforts have not been very successful. GRNSW has rehomed only 593 greyhounds through its Greyhounds As Pets ("GAP") Program since 2007 at a cost of \$200,000 per year. The WDA reported that the average rehoming rate for the years 2010 to 2013 was 0.5% of dogs whelped.
- 1.20 With little or no support from GRNSW, the combined efforts of welfare and volunteer organisations in NSW have resulted in the rehoming of consistently more retired greyhounds than by GRNSW's GAP Program. In the 2014/15 financial year, volunteer and welfare organisations (including the RSPCA) rehomed 412 greyhounds - GAP rehomed 173.
- 1.21 GRNSW is taking steps to improve its dismal record of rehoming. On 20 March 2016, it announced that it was allocating \$1 million in funding to convert 76 kennels at the program's one facility (the "Playhouse Pet Motel" at Wyee on the NSW central coast) to accommodate greyhounds in its GAP Program, turning the Pet Motel into a dedicated rehoming centre with 120 kennels for greyhounds.
- 1.22 It takes at least six weeks for a greyhound to move through the GAP re-training program. This means that, at best, 1,040 retired greyhounds can participate in GRNSW's rehoming program each year. Not all of them will be successfully rehomed.
- 1.23 GRNSW has informed the Commission that it estimates in 2016 it will rehome 435 greyhounds (5.5% of greyhounds whelped), in 2017 it will rehome 598 greyhounds (approximately 7.6%), and in 2018 it will rehome 775 greyhounds (or 9.8% of dogs whelped). Thus, for the foreseeable future, GRNSW, the governing body of the industry, does not anticipate that it will be able to rehome more than 10% of greyhounds whelped in any year.
- 1.24 The rehoming rate of dogs accepted for rehoming by volunteer organisations in NSW and the ACT over the last seven years was 87%. This suggests that, on a best case scenario, no more than 907 dogs accepted by the GAP Program will be rehomed each year.
- 1.25 The Commission considers that no more than 4% of greyhounds whelped in NSW each year will be rehomed through non-industry welfare organisations. This percentage is based on GRNSW's figure of 7,832 greyhound pups to be whelped each year and an average of 326 greyhounds being rehomed each year by volunteer organisations including the RSPCA. Based on the 2015 whelping figure of 6,295, the rehoming rate would be 5.5%.

- 1.26 Assuming that GRNSW and welfare and voluntary organisations can rehome 1,101 dogs each year from 2018, they will be able to rehome only about 14% of dogs whelped, based on the 7,832 figure, or about 17.5% based on the 2015 whelping figure of 6,295.
- 1.27 The Commission estimates the total maximum number of greyhounds that could be rehomed in a year between GAP, volunteer and welfare organisations, based on the most ambitious figures achievable is approximately 1,366 greyhounds. This represents 17.5% of all greyhound pups whelped in a year based on GRNSW's figure of 7,832 per year or 22% of all greyhound pups whelped in a year based on 2015 whelping figures of 6,295 per year.
- 1.28 That leaves about 78% to 82.5% of dogs whelped each year that have to be retained as breeders or pets, find a home elsewhere, or be destroyed.
- 1.29 Given the already taxed facilities of potential rehoming organisations, it will be difficult to get dogs in this 78% to 82.5% category trained for rehoming without a massive capital investment by GRNSW to provide further rehoming facilities, an investment it cannot make. In evidence before the Select Committee in 2013, Dr Karen Cunnington of the Greyhound Rehoming Centre said that, even if only 50% of the dogs being bred in New South Wales each year were trained for rehoming, the cost of the training would be up to \$60 million.<sup>2</sup> This indicates that rehoming the number of dogs that are being bred is not a viable proposition.
- 1.30 In any event, this does not take account of the further problem in getting greyhounds rehomed: they are in competition with other breeds of dogs that seek rehoming.

## Education of industry participants, socialisation of greyhounds and the culture of change

- 1.31 To endeavour to increase the rehoming rate, GRNSW proposes to introduce mandatory education for industry participants concerning matters such as the breeding, training and socialisation of greyhounds.
- 1.32 The WDA submitted its report to GRNSW, "Review & Assessment of Best Practice, Rearing, Socialisation, Education & Training Methods for Greyhounds in a Racing Context", in July 2015. The contributing researchers to the report were eight highly qualified experts. In its report, the WDA stated that a significant weakness of the greyhound industry was that its knowledge base rested predominantly at the level of individual breeders and trainers, with much of the training of greyhounds based on knowledge handed down over the years, which is out of date, flawed or unacceptable. The WDA commented that there was minimal consideration of the major effects of some common industry practices on the health, welfare and performance of the greyhound throughout its life cycle. Many approaches to management and training did not compare favourably with best practice. The WDA stated that:
- In the absence of a formal education program for participants, many of the common dog management practices in the NSW greyhound racing industry do not appear to be based on an understanding of fundamental behavioural needs and canine performance science. The absence of this knowledge framework increases the risk that optimal selection for breeding, and the race track performance of greyhounds, will be compromised.
- 1.33 The WDA commented that this situation was "compounded by the predominant focus of the regulatory framework for Australia's greyhound industry members being in compliance with regulations, rather than the promotion of education and best practice through the provision of adequate resources." The WDA argued "that the way forward for the greyhound racing industry

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<sup>2</sup> Dr Cunnington gave evidence before the Commission, and is referred to in that context as Dr Dawson.

is to expand the knowledge base from informal training through collaboration to develop a training program for greyhound trainers that equips them with a skill-set based around the principles of teaching and learning.”

1.34 The Commission agrees with the analysis of WDA concerning the poor quality and out of date nature of many management practices in the industry and agrees with its recommendation that structured, expert-assisted education programs concerning all phases of a racing greyhound’s life need to be undertaken by all participants in the industry as part of their licence conditions if the industry is to survive. Regrettably, as succeeding Chapters in this Report indicate, the Commission has no confidence that these recommendations, even if put in place, will achieve the desired goal of achieving best practice in all aspects of the industry.

1.35 To assist its analysis and recommendations for the industry, the WDA conducted a survey of 2,483 people concerning greyhound management. Of the respondents to the Survey, 45% reported they were members of the general public, 31% indicated that they owned a retired racing greyhound, 15% were members of the greyhound racing industry (being an owner, rearer, trainer or breeder) and 10% identified as part of an animal welfare advocacy group. The Survey was not a scientific survey in the sense that it was representative of the views of either the greyhound industry or the general public.<sup>3</sup> Nonetheless, it tended to confirm what other evidence before the Commission has indicated - that sections of the industry, perhaps large sections, are hostile to change that is necessary, if the industry is to continue.

1.36 In its report, WDA said:

Industry members appeared generally interested in research to help them improve practices, but responses to some items suggest a lack of willingness to adopt all suggestions provided by research studies. Furthermore, participants were not particularly interested in workshops to improve socialisation, training, or rearing techniques. However, they were interested in workshops on first aid and healthcare for racing dogs. That many participants appeared to believe that research into other breeds would not apply to greyhounds is telling. To our knowledge, there is no scientific evidence to suggest that greyhounds are substantially different from other dog breeds in the amounts and types of socialisation and rearing experiences that they need to experience good welfare.

1.37 As subsequent Chapters of this Report show, improvement in the rearing and socialisation of young greyhounds is fundamental to reducing wastage. Inadequate socialisation and inappropriate rearing produces fear, anxiety and heightened predatory aggression in greyhounds. Fear and anxiety are highly heritable traits. They produce non-competitive greyhounds. This has the effect that more greyhounds must be whelped to make up the number of starters required in races, more dogs have to be rehomed and more dogs are unnecessarily destroyed than should be the case. Greyhounds who exhibit fear and anxiety and particularly predatory aggression are also difficult to rehome.

1.38 Yet answers to the Survey caused the WDA to comment:

The lack of interest in improving socialisation techniques was reflected in a number of items on the survey. For example, the items, ‘a good companion animal after retirement’ and ‘good with other animals’ were ranked nearly last, at 11 and 12, out of the 13 most important things in a racing greyhound.

1.39 This lack of interest in the socialisation and rehoming of greyhounds so as to ensure that more of them will be competitive and more will be rehomed does not augur well for reducing wastage rates. If improvement in practices is ever to occur, it may possibly take a generation or more

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<sup>3</sup> Of the respondents, 35% lived in NSW. The respondents were “recruited primarily through social media platforms, emails to the Australian racing greyhound professional member bodies and emails to personal contacts of the research team”.

before there is any significant change in the culture of the industry. In its concluding comments, the WDA said:

In the case of greyhound industry members, long-time owners, rearers, breeders and trainers may be resistant to changing socialisation and training practices in an effort to reduce wastage and improve post-career adoption rates, because this would require them to acknowledge that their past behaviours have been less than ideal for achieving these ends. However, industry members who are new to greyhound management may be more amenable to changes, especially if they are educated on the ways in which different practices may improve race track performance and improved dog welfare. The results of the survey suggest that greyhound industry members are concerned about their dogs' welfare and their desire to chase; using those goals as a reason to alter management practices may be effective for some elements of the racing greyhound community.

- 1.40 In its response to notice of potential findings by the Commission, GRNSW argued that there was no evidence that it would be unable to establish a structured program of socialisation and habituation that will reduce wastage. Part of the answer to this argument is found in the above passage from the WDA Report. Important sections of this industry have little, if any, interest in the socialisation of greyhounds. Another answer is the culture of the industry. This is an industry whose members have not only condoned but have participated in the mass slaughter of tens of thousands of healthy greyhounds simply because they no longer are, or never were, able to compete against other dogs.
- 1.41 It is an industry where, as Chapter 3 shows, 10-20% of trainers engaged in the barbaric practice of live baiting, where a vocal minority of trainers believed live baiting was necessary even after the *Four Corners* exposure and where large sections of the industry must have known that live baiting was occurring but did nothing to stop it.
- 1.42 It is an industry where, as Chapter 17 details, many trainers appear to prefer cheap and sometimes painful methods of treating greyhound injuries instead of using the services of qualified veterinary surgeons.
- 1.43 It is an industry where some participants have preferred their financial interests to the welfare of the greyhounds they own by exporting them to jurisdictions with inferior standards of animal welfare, as outlined in Chapter 19.
- 1.44 It is an industry where the peak body – Greyhounds Australasia – has said that the industry has preferred profits to welfare and where a Joint Working Group established by GRNSW in 2015 to advise on industry reform has reported to GRNSW's interim Chief Executive that the culture of the greyhound racing industry needs to change.
- 1.45 The Commission has no doubt that the present management of GRNSW is dismayed by the extent of wastage in the industry and will do everything it can to reduce it. It is one thing to formulate plans for the betterment of the industry. It is another matter to carry them out in the face of a recalcitrant industry.

## Breeding reforms

- 1.46 On 1 July 2015, GRNSW introduced breeding reforms which are designed to prevent overbreeding and lessen wastage. Given its required racing schedules, breeding restrictions are unlikely to have much effect on long term wastage rates which are in lockstep with these schedules. The number of greyhounds required to be bred cannot be divorced from the number of starters required to meet the number of meetings set down each year. In addition, at least some sections of the industry are opposed to restrictions on breeding.

- 1.47 In its May 2016 submissions to the Commission, however, GRNSW has drawn attention to a startling drop in breeding numbers that commenced in July 2015.
- 1.48 In January, February, March, April, May and June 2015, greyhounds whelped in those months averaged a year on year *increase* of 3.83%. Commencing in July 2015, the year on year average monthly percentage to April 2016 decreased by 48%. And the figures for March 2016 (69%) and April 2016 (66%) indicate that the negative trend is continuing.
- 1.49 The total pups whelped in NSW for the months January to April 2016 is 1,590. Extrapolated, this figure indicates a total of 4,770 pups whelped for 2016.
- 1.50 GRNSW has contended that “there is a sound basis to consider that GRNSW’s breeding and licensing requirements and restriction have been part of the reason for the reduction in pups whelped”. Given the date of the introduction of the breeding measures and the substantial decline in whelping that commenced in July 2015, the conclusion that the breeding measures caused the drop in litters whelped is possible. However, to a significant extent the reforms only convert into rules, practices that already existed. Further, the Commission’s analysis of GRNSW’s breeding and licensing requirements and other breeding restrictions suggests that it is unlikely that they are responsible for the recent reduction in litters. The Commission considers that it is more likely than not that uncertainty as to the continued existence of the industry in New South Wales is a more significant contributor to the drop in whelpings. In his Opening Address to the Commission, Mr Rushton, SC, Counsel Assisting, made it clear that recommending closing down the industry was a real option for the Commission.

## Live baiting

- 1.51 This Commission was established following the live baiting scandal that was exposed by the ABC *Four Corners* program in February 2015. That program showed training tracks where live animals of various kinds were mauled and killed by greyhounds for the purpose of getting the dogs to chase the “tin hare” in races more keenly. Giving a greyhound a “kill” has long been regarded by industry participants as a means of improving a greyhound’s performance in races. In evidence before the Commission, it was described as a traditional training method.
- 1.52 In the course of the Inquiry, the Commission compelled 10 persons, whom it suspected of being engaged in live baiting, to give evidence in public hearings concerning the practice. Nine of the 10 admitted that they had engaged in this barbaric practice. The other person denied having engaged in the practice, but the Commission is comfortably satisfied that he had. The nine witnesses gave various descriptions of their views of the extent of live baiting in the industry. Among the descriptions were that the practice was “common practice”, “rampant” and “extremely widespread”. The effect of their evidence was that some of them believed up to 90% of industry participants used live rabbits to train greyhounds. These views were based on gossip and talking with other trainers and participants in the industry. The Commission concluded that their evidence as to the extent of live baiting could not be regarded as a reliable indicator of the extent of live baiting.
- 1.53 However, a licensed trainer, who admitted to engaging in live baiting and assisting others to do it at the training track he owned, testified that he thought about 10 - 20% of trainers engaged in live baiting. His training track was a popular venue for those who wished to engage in live baiting and educate their dogs. There was evidence that trainers queued up at the weekend to use his track. His knowledge of the practice and the number of trainers involved in live baiting was obviously extensive. What happened at his track can be regarded as a reasonably representative sample of what has gone on in the industry. The Commission thought that this trainer’s estimate of the extent of the practice – although well below that of other estimates – was more likely to be correct than that of the other witnesses. Whatever may be the correct percentage of trainers

engaging in live baiting, the evidence indicated that, up to February 2015, a significant number of trainers were doing so.

- 1.54 The evidence before the Commission also suggested that the practice was effectively condoned by many industry participants who may not themselves have engaged in the practice. The Commission heard evidence that, at the Appin track during trialling sessions, an enterprising vendor sought custom from trainers attending these trials by offering live rabbits for sale. Given the persons to whom the offers were made, it is easy to draw the conclusion that the rabbits were being offered as live baits for training greyhounds and that those attending the Appin track knew it. Witnesses also gave evidence of persons who were in effect door-to-door salesman offering live rabbits for sale to trainers. Yet none of the many participants in the industry who must have been aware that live baiting was prevalent in the industry appears to have made any attempt to bring the matter to the attention of GRNSW, or NSW Police, in a formal way. This is a telling indictment of the culture of the industry.
- 1.55 Even more disturbing than this evidence of participants condoning or turning a “blind eye” to the practice, was evidence that several high-ranking officials of GRNSW believed that live baiting was occurring in the industry. One official gave evidence of discussions with industry participants in early 2010 during which some not only admitted to using live animals to train greyhounds but expressed strong resistance to changing the practice. In September 2009 and March 2010, senior officials even prepared documents for meetings of the GRNSW Board which plainly indicated that the practice continued, yet senior management took no adequate steps to investigate and stop the practice.
- 1.56 The Commission found no firm evidence, beyond second-hand reports, that live baiting was continuing in the industry in New South Wales after February 2015. However, it would be naive to think that the practice has stopped forever. As Chapter 3 of this Report shows, it is a practice that has been going on for decades despite the heavy penalties – including jail terms – available for those convicted of the practice. The Commission heard expert evidence, which it accepts, that live baiting of greyhounds can enhance performance for at least some greyhounds.
- 1.57 Tellingly, Mr Paul Newson, the interim Chief Executive of GRNSW, who was appointed to the position in late February 2015, gave evidence of conducting a number of forums with industry participants. Mr Newson told the Commission that some industry participants made it clear in very plain terms that they still supported live baiting. Mr Newson said that what he found alarming was that there was a rejection of any accountability or obligation to condemn the actions of those who had been exposed by the *Four Corners* program as engaging in live baiting. A very vocal minority made it clear to Mr Newson that, in their view, the real criminals were those who had trespassed on the property of trial track owners by setting up the cameras that had recorded the live baiting. Mr Newson said that “there was a very vocal presence of those that would suggest the demise of the industry if they weren’t allowed certain practices.” Also telling is the fact that, in the survey conducted by WDA, industry members ranked “A keen chaser” as the second most important attribute of a greyhound, only slightly behind “Physically sound”. This response suggests that the ability to get a dog to chase keenly is perceived to be of great importance by industry members and provides the temptation to do whatever it takes to get a dog to chase.

## Deception of the public concerning deaths and injuries

- 1.58 Stewards’ reports are the chief means by which the industry informs the general public as to incidents that have occurred at a race meeting. They are prepared at the end of the meeting and published on GRNSW’s website. If they are accurate and complete, the reports are an important means by which members of the public, including punters and bookmakers, can obtain information about how individual dogs performed during a race. They record such matters as

whether a greyhound suffered interference, started slowly, ran wide on turns, or suffered injury or death. The stewards' report is a key source of information as to why a dog may have performed as it did in the race in question. Mr Bentley, the then Chief Steward of GRNSW, told the Commission that it "is a document that is targeted to the wagering public. It's designed for persons who wish to ... wager on greyhound racing to obtain more information in relation to races." Mr Bentley recognised that other persons including animal welfare organisations might seek to rely on the accuracy of information contained in the stewards' reports. On any view, they are an important tool for making the industry accountable to the community for its practices.

- 1.59 One of the disturbing features of this Inquiry was the Commission's discovery that, from at least April 2013 until November 2015, GRNSW had adopted a policy of deliberately misreporting the extent of injuries suffered by greyhounds at racetracks. Furthermore, GRNSW deliberately failed to make available to the public information about deaths of greyhounds at racetracks - both as to fatalities during races and as to dogs that had to be put down by the on-track veterinarian as a result of catastrophic injuries suffered during a race.
- 1.60 In Chapter 4 of this Report, the Commission finds that GRNSW engaged in the conduct knowingly and with the intention of sanitising the information that became available to the public concerning injuries suffered by greyhounds. The motive for the policy was the hope that, by doing so, substantial criticism of the greyhound racing industry in NSW could be avoided. Similarly, deaths on track were not recorded in the stewards' report because, as one steward told a veterinary surgeon, it would "stir up the greenies". This conduct of GRNSW was revealed only as the result of the Commission's investigations. It may have continued to this day if the Commission had not discovered it.
- 1.61 Sanitising the information concerning injuries and omitting information concerning the deaths of greyhounds was bad enough. It constituted a deception of the public on matters that the public was entitled to know. It illustrates the truth of the statement of the WDA that historically, "GRNSW has only acknowledged its members and industry participants as stakeholders." In concealing the information, GRNSW rejected the fact, or at least failed to recognise, that the industry is accountable to the community for the way it governs the industry. The enormity of the conduct is aggravated by the fact that it continued after the public exposure of the live baiting scandal and the setting up of this Commission. It was not as if the policy was a closely guarded secret that was applied by one or two stewards. Mr Bentley said that the misreporting of injuries was known to all members of GRNSW's management 'Leadership Group' and was common knowledge amongst all stewards. He further said that "the large majority of the organisation" would have known about it. While a large majority of the organisation knew about it, the newly appointed officers, Mr Newson, the interim Chief Executive Officer, and Dr Elizabeth Arnott, the Chief Veterinary Officer, were not informed about the policy. They found out about it in mid-November 2015 shortly before they gave evidence to the Commission. Mr Bentley said that it never occurred to him to tell Mr Newson about the policy. Upon discovering the existence of the policy, Mr Newson put an end to it.
- 1.62 This deception of other stakeholders in the industry – the NSW Government, the community and the various welfare groups – and the continuation of the deception after the exposure of the live baiting scandal adds to the concern that such is the culture of the industry and some of its leaders that it is no longer, if it ever was, entitled to the trust of the community.

## Injuries and tracks

- 1.63 GRNSW proposes to take various steps to reduce injuries and to extend the racing careers of greyhounds by providing more racing opportunities for slower and older dogs with the effect of reducing the number of dogs required to meet its race schedules. These matters are dealt with

in various Chapters of this Report. As explained in those Chapters, the Commission thinks that these innovations, even if successfully implemented, will have only a small effect on wastage rates.

- 1.64 Injuries to greyhounds that occur in races and training trials are both a governance issue and an animal welfare issue. Of great concern to the Commission is the extent of injuries to greyhounds during races and training trials and when being broken in. The most frequent injuries are tears to the back muscle of the hind legs, the hip support muscles and the shoulder muscles, ligament ruptures and tarsal fractures. The cost of repair to tarsal fractures is often high, and leads to dogs suffering these injuries being euthanased because it is cheaper to have a veterinarian kill them than repair the injury. Racing greyhounds also suffer a number of other fractures and dislocations including metacarpal, pelvis, elbow, styloid, radial carpal, ischial, femoral, tibial and talar fractures. Many injuries cause severe pain to the greyhound; some of them resulting in death on the track or shortly afterwards.
- 1.65 On 12 February 2016, GRNSW had published its “Preliminary Greyhound Racing Injury Report (15 November 2015 to 1 February 2016)”. The period covered by this report was 79 days and, during that period, 231 race meetings were conducted across NSW at TAB and non-TAB venues.
- 1.66 On 10 May 2016, GRNSW published its “Second Greyhound Racing Injury Report (1 January 2016 to 31 March 2016)”. It covered a period of 91 days. According to the report 279 race meetings were conducted across NSW at TAB and non-TAB venues during that period.
- 1.67 The injury figures in both reports were those identified by on-track veterinarians. The figures did not include greyhounds that had sustained an injury during a trial where there was no on-track veterinarian in attendance, greyhounds that had suffered any sort of injury during a race meeting that had not been identified by an on-track veterinarian, or greyhounds that were later euthanased because of injury sustained while racing or trialling. Some research has shown that only 16% of serious injuries are diagnosed as such at the track. An on-track veterinary surgeon told the Commission that the reason for the failure of diagnosis was that the dog had “probably run full distance with an injury and I mean they’re so worked up that day that they don’t probably exhibit pain to you. It’s very difficult. And probably if you looked at them again two or three hours later they may be more obvious but these dogs go home as soon as they are examined”.
- 1.68 Because of these limitations, both Greyhound Racing Injury Reports are likely to have significantly understated the true number of injuries sustained by greyhounds during the course of a race or trial, including major and catastrophic injuries. Similarly, the true number of greyhound deaths was likely underestimated.
- 1.69 Extrapolating the injuries sustained during the 91 day period covered by the Second Greyhound Racing Injury Report suggests that, over the course of a year, there would be approximately 2,342 injuries of varying degrees of seriousness; 361 major injuries; and 136 catastrophic injuries resulting in the greyhound’s death or its euthanasia on track.
- 1.70 On 12 April 2016, GRNSW provided the Commission with details of the number of greyhounds that raced in a year in NSW (having been whelped in any prior year). The average is 11,061. Using this average number, the injury data contained in GRNSW’s Second Greyhound Racing Injury Report implies that each year 21.17% of greyhounds which compete in a race suffer an injury; 3.26% suffer a major injury; 1.23% suffer a catastrophic injury resulting in the greyhound’s death or euthanasia on track; and 4.49% suffer either a major or catastrophic injury.
- 1.71 In both Injury Reports, GRNSW carried out an analysis of what it described as “greyhound trialling injury rates”. However, it acknowledged an obvious problem with such an analysis –

veterinarians are not required to attend all trials, and GRNSW's sample was only of the "greyhound trialling population (monitored by GRNSW veterinarians)". Nevertheless, it asserted that this limited data was material "...upon which some inferences can be made about trialling population injury rates." It did not provide any detail of the inferences which might be drawn. The Commission considers that there is only one available inference – injuries occur during trialling and they are sometimes fatal injuries.

- 1.72 The figures extrapolated from these two Reports are remarkably consistent although, because of the size of the samples and extrapolation, they need to be treated with some caution. That said, however, they suggest that over 21% of greyhounds who compete at any meeting are likely to suffer an injury, ranging from minor to catastrophic resulting in death. About 4.7% of the greyhounds who suffer injuries will suffer serious or catastrophic resulting in severe pain for the greyhound. That is, of the 80 individual greyhounds that compete in a meeting, 3 or 4 will suffer a serious or catastrophic injury within the year and another 13 or 14 dogs (or 17%) will suffer lesser injuries. And, as the Commission has pointed out, the true injury rate is very likely to be higher than these figures suggest.
- 1.73 In its Submission dated 24 May 2016, GRNSW disputed that the percentage of dogs injured each year exceeded 20%. It contended that approximately only 11.2% of individual greyhounds who had raced in the period 1 January 2016 to 31 March 2016 sustained injury. As detailed in Chapter 15, the methodology used by GRNSW to make this assessment is flawed.
- 1.74 In any event, even if the correct figure was 11.2%, which it is not, the rate of injury would be unacceptable. In its submission, GRNSW stated that it "recognises the vital need for measures to be put in place to reduce on track injuries".
- 1.75 The causes of greyhound injuries are various. There is a "complex inter-play of different factors". A racing greyhound travels at considerable speed, which contributes to injuries being suffered depending upon surface conditions and track design, particularly on tracks with turns. Greyhound racing tracks in NSW are circular, oval-shaped or straight. Appin is the only straight track. Oval-shaped tracks have either one or two turns. A recent Australian study found that approximately 7% of injuries on oval-shaped tracks occurred out of the starting boxes, 65% occurred at the first turn and approximately 15% occurred at the second turn. A study of injuries on south-eastern Queensland tracks found that, although the rate of injuries did not differ between the straight track at Capalaba and circular tracks in that area, no fractures of any type were recorded for the straight track. Two experts gave evidence before the Commission that straight tracks resulted in fewer right tarsal bone injuries. On circular tracks, tarsal bone injuries are produced by rotational force as the greyhound goes around the turn.
- 1.76 Research suggests that track surface may also play a role in the type and severity of on-track injuries. In NSW, there are 14 tracks with a grass surface, 18 with the surface of loam (three of which have a sand surface) and one track which has a sand based surface having switched from loam. Tendon and ligament injuries appear to be significantly higher on grass tracks, and below hock fractures are particularly prevalent on tracks with a sand surface.
- 1.77 Research has shown that tracks with a minimum distance from the starting boxes to the first bend have a higher risk of injury because greyhounds are more likely to be grouped together entering the first bend resulting in an increased risk of interference. In the United Kingdom, a box draw system is used based upon the greyhound's propensity to run wide or hug the rail, but there is a lack of research to support the conclusion that such a system reduces the severity of injuries or their frequency. Other matters which have been flagged as contributing to injuries include age and weight, and performance diets high in meat but lacking in calcium.

- 1.78 The Commission’s view is that there is no simple answer to the question why injuries are so frequent and often so severe. If the industry is permitted to continue, further research and the implementation of recommendations must be treated as a priority.
- 1.79 In its submissions to the Commission, GRNSW acknowledged that “clubs around NSW are outdated and require significant infrastructure upgrades including improved track design.” That statement was borne out by the evidence before the Commission. The Commission’s investigation has revealed that for many years GRNSW did little to improve the welfare of greyhounds by addressing these contributors to wastage.
- 1.80 The Commission is satisfied that injuries make a significant contribution to wastage because the injury sustained is often severe. When a greyhound’s performance is impaired by injury, it is likely to be destroyed. There are no immediate solutions to this significant welfare issue.
- 1.81 GRNSW has recently announced that it has commissioned a research project to “identify optimal greyhound race track design for canine safety and welfare”. Research commenced on 4 April 2016 and is expected to take up to 12 months to complete. The proposed research may provide a further insight but will not itself solve the problem of injuries.

## Industry benefits

- 1.82 In determining whether the governance, integrity and animal welfare issues can be appropriately addressed to permit the continuation of the greyhound racing industry in NSW, the Commission considered that the benefits that the industry brings to the State must be considered. The Commission interpreted “governance” to mean the manner of governing the industry. It interpreted “integrity” as referring to the qualities of honesty and moral judgment. It therefore took the view that evaluating the governance of the industry required consideration of any economic or social benefits that its governance provides.
- 1.83 Term C6 required the Commission to evaluate whether issues relating to the governance, integrity and animal welfare standards of the industry can be appropriately addressed to permit the industry to continue and provide an ongoing economic and social contribution to the State. All three categories – governance, integrity and animal welfare – must be evaluated together, not merely animal welfare. Although each category is distinct from the other two categories, they are interlinked. How the industry is governed will obviously have an effect on animal welfare. Likewise, if the industry lacks integrity – for example by condoning live baiting – it will have consequences for animal welfare. In the Commission’s view, a finding that animal welfare issues cannot be appropriately addressed does not have the automatic result that the industry could not be permitted to continue: although it is a very powerful factor in the equation, it has to be weighed against any economic or social benefits that the industry may bring to the State.
- 1.84 As indicated in Chapter 25, 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 Pty Ltd in 2014, “Size and scope of the NSW Racing Industry” (“the IER Study”). The IER Study reported 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. 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. Industries receiving this flow on effect included veterinary practices, dog food suppliers, retail, tourism, accommodation and transport services.

- 1.85 According to the IER Study, greyhound 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. Although racetrack attendances have been declining for many years, off-course wagering has continued to grow, principally through wagering with corporate bookmakers. In FY13, the NSW Government received about \$30 million in taxation generated by greyhound racing. However, the introduction of the tax harmonisation scheme discussed in Chapter 25 is certain to reduce the amount the State receives from greyhound racing in future years.
- 1.86 The figures suggested by the IER Study were significantly higher than a report produced by Access Economics for GRNSW in 2010. The number of persons attending meetings may also be overstated in the IER Study. The Select Committee found that, on average, 500 people attended a metropolitan race meeting, 114 people attended TAB meetings and 107 people attended non-TAB meetings.<sup>4</sup> For the financial year 2010, 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>5</sup>
- 1.87 The WDA, in its report to GRNSW, appears to have preferred the figures in the Access Economics Report to those in the IER Study.<sup>6</sup> 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 and administration of the sport, many on a voluntary basis.<sup>7</sup>
- 1.88 Information obtained by the Commission during the Inquiry, indicates that the IER figures are too high and that even the Access Economics/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.
- 1.89 The Commission sought and received information from the 34 NSW greyhound clubs. This included information concerning employment. The responses showed that 52 persons are directly employed by the clubs on a full-time basis, 511 persons are employed on a part-time or casual basis and 464 people provide voluntary services.
- 1.90 GRNSW itself provides employment for 79 people. 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 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 of greyhounds. 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 veterinary surgeons, pharmacists, butchers,

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<sup>4</sup> Select Committee First Report, [2.7].

<sup>5</sup> Select Committee First Report, [2.10].

<sup>6</sup> Ex S (17-19 November 2015), p. 12.

<sup>7</sup> Ibid.

carpenters and employees in wholesale and retail shops also provide goods and services to the greyhound industry.

## Financial contribution

- 1.91 A report on the industry prepared for the Commission by PricewaterhouseCoopers (PwC) accountants indicates that, after one-off expenses arising from the implementation of the OzChase computer system and this Special Commission of Inquiry in the current financial year, the industry in NSW will be profitable from FY17 to FY20. Despite an anticipated increase in animal welfare expenditure, if the industry is permitted to continue, and based on management forecasts concerning revenue and expenditure that PwC and the Commission thinks are reasonable, GRNSW should have an EBIT (earnings before deductions for interest and taxation) of \$ [REDACTED] for the year ended June 2017, rising each year to \$ [REDACTED] for the financial year ended FY20. This does not, however, take into account the matters below.
- 1.92 A submission from Tabcorp in June 2015 indicated that greyhound racing was popular with punters in NSW and was the fastest growing of the three racing codes. In the previous year, it had attracted 100,000 customers (which the Commission assumed were the number of wagers laid) and over \$1 billion in wagers.
- 1.93 A newspaper report of a survey by Roy Morgan Single Source (Australia), October 2014 - September 2015 indicated that greyhound racing was most popular among punters in the under 35 age category, with 45.1% of bettors on greyhound racing being in that age group and a further 29.3% being in the 35-49 age group. The popularity of greyhound racing among the under 35 age group probably reflects the fact they are more comfortable with on-line wagering and are more likely to be out at night in clubs and pubs where greyhound racing is televised than other age groups are likely to be.
- 1.94 As the foregoing figures show, the greyhound racing industry has made a positive economic and social contribution to NSW in previous years. It seems highly probable, however, that, although the industry would continue to make a positive economic contribution to the State if allowed to continue, it would not be able to maintain its previous level of contribution to the State's economy in future years.
- 1.95 Race harmonisation legislation would certainly reduce the amount of money that the State would receive 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.
- 1.96 Submissions made by GRNSW also indicate that its financial viability will be impacted by two additional factors, of financial relevance and of relevance to the welfare of greyhounds. GRNSW has informed the Commissioner that track rationalisation is proposed, principally by replacing the existing 34 greyhound tracks with 10 to 14 tracks, to be restyled as Centres of Excellence. The financial impact of these proposals is discussed in Chapter 26 of this Report. However, 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 \$ [REDACTED]

- 1.97 Changes that will be brought about in restructuring the greyhound industry – particularly GRNSW’s plan to reduce the number of greyhound tracks from 34 to a maximum of 14 – would affect the economies of many towns in NSW.

## Social licence

- 1.98 Term C6 of the terms of reference requires the Commission to evaluate whether the governance, integrity and animal welfare standards of the industry can be appropriately addressed to permit the industry to continue so as to provide an ongoing economic and social contribution to the State. The evaluation involves a value judgment. It requires the Commission to make a finding as to what is feasible in terms of implementing governance, integrity and animal welfare standards for the industry and then making a judgment whether they are suitable or proper in all the circumstances. The Commission considers that animal welfare must be given the greatest weight in making this value judgment. This is consistent with the view of the JWG Report in January 2016 to GRNSW’s interim Chief Executive that animal welfare reform must be at the centre of reform of the industry.
- 1.99 In the last 40 years, many countries in the Western world have increasingly recognised that social institutions – whether industries, corporations, businesses or organised sports – must answer to the wider community for their behaviour and that they have a “social licence” to operate only as long as they perform in accordance with public expectations. The Commission is of the view that the greyhound industry cannot continue in this State without a social licence to do so. It can make no net “social contribution to the State” if it is not fit to maintain a social licence to operate.
- 1.100 One of the earliest references to the “social licence to operate” was in Shocker and Sethi’s 1973 article, in which they stated that “any social institution – and business is no exception – operates in a society via a social contract.”<sup>8</sup> The concept of a “social licence to operate” began to develop in more detail in the mid-1990s, particularly within the oil and mining sectors as they responded to perceived challenges to their legitimacy following environmental disasters.<sup>9</sup> Most of the research conducted in the following years focused on corporate social responsibility and the relationship between companies and local communities affected by “the adverse social and environmental impacts of corporate activity.”<sup>10</sup> The concept has since achieved a wider application and has been utilised by other sectors of the resources industry (including pulp and paper manufacturers), consultants, governments, alternative energy and agriculture.<sup>11</sup>
- 1.101 In its Report, the WDA recognised that the greyhound industry operates under a social license that is revocable. Under the heading, “Changing the way GRNSW operates - best practice and welfare initiatives”, the WDA said:

The racing greyhound industry has many external stakeholders. Historically, GRNSW has only acknowledged its members and industry participants as stakeholders. Recognising that the general public, animal advocacy groups, animal welfare legislators and media are significant influencers on the industry’s social license to operate, and therefore future sustainability, is an important cultural shift that needs to occur.

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<sup>8</sup> A Shocker and S Sethi, “An Approach to Incorporating Societal Preferences in Developing Corporate Action Strategies” (1973) 15 *California Management Review*, p.97.

<sup>9</sup> Boutilier and Thomson, “Modelling and Measuring the Social License to Operate: Fruits of a Dialogue between Theory and Practice” (2011) *International Mine Management*; Parsons, Lacey and Moffatt, “Maintaining discursive legitimacy of a contested practice: How the minerals industry understands its social licence to operate” p. 1

<sup>10</sup> Parsons, Lacey and Moffatt, “Maintaining discursive legitimacy of a contested practice: How the minerals industry understands its social licence to operate” (2014) CSIRO Resources Policy, p. 1.

<sup>11</sup> K Moffatt and Airong Zhang, “The Paths to social licence to operate: an integrative model explaining community acceptance of mining” (2014) 39 *Research Policy*, pp. 61-70.

- 1.102 The JWG Report also implicitly acknowledged that the greyhound industry operates under a social licence, stating that the industry must “continue to have a mandate from the community” and that it must “meet community expectations as being an ethical and humane industry. So too did Dr Elizabeth Arnott, the Chief Veterinarian for GRNSW, who acknowledged in her evidence to the Commission that, if the greyhound racing industry is to have a continuing social licence to operate, it is crucial that information on euthanasia and injuries on tracks be made available to the government, the community and the welfare organisations. In its Submission dated 24 May 2016, GRNSW said that it “accepts that the continued existence of the industry depends on it having a social licence”.

## What is a “social licence”?

- 1.103 Defining what is meant by the concept of a “social licence to operate” has so far proved too difficult for the term to be used as a criterion of legal responsibility. At the present stage of its development, the term is seen as insufficiently precise to give rise to legal rights and obligations. It is, therefore, regarded as a social or political construct, not a legal criterion. In *No TasWind Farm Group Inc v Hydro-Electric Corporation (No 2)*, Kerr J said:

... I harbour considerable doubt that what is conveyed by the notion of ‘social licence’ can be identified with such precision as would enable a court to conclude that any particular practice fell within or outside of its scope. It seems to me arguable that the notion of ‘social licence’ may be better understood as a construct of social and political discourse rather than of law and that it is potentially too amorphous and protean in nature to be applied as the criterion for a judicial declaration.<sup>12</sup>

- 1.104 As defined by the CSIRO, a “social licence to operate” refers to the “ongoing acceptance or approval from the local community and other stakeholders” involved in an industry, project or operation.<sup>13</sup> It is “intangible and unwritten” and can therefore be distinguished from a statutory licence.<sup>14</sup>
- 1.105 Thomson and Boutilier have developed a cumulative pyramid model of a social licence, which identifies three central components: legitimacy, credibility and trust.<sup>15</sup> According to this model, an organisation or industry must first develop legitimacy with stakeholders, which will be followed by credibility, and finally by trust. They identified the quality of a social licence held by a company as being inversely related to the level of socio-political risk it faces. Hence, an organisation with little legitimacy in the community has a high risk of having its social licence withdrawn. Conversely, an organisation that is highly trusted by its relevant stakeholders has a strong and entrenched social licence to operate. It faces a low risk of losing access to its essential resources.<sup>16</sup>
- 1.106 Moffat and Zhang examined the mining industry and suggested that community trust is the central element in a company or industry’s social licence to operate. They argued that this trust is affected by a number of factors, including the company’s management of operational impacts and the way that companies engage with community members. The level of trust maintained by the company will ultimately affect the community’s acceptance of their operations.<sup>17</sup> A social licence has also been characterised as a set of demands and expectations held by stakeholders

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<sup>12</sup> [2014] FCA 348 at [38].

<sup>13</sup> KPMG, “The Community Investment Dividend” 2013, p. 4

<sup>14</sup> Daniel Franks and Tamar Cohen “Social licence in design: Constructive technology assessment within a mineral research and development institution” (2012) 79(7) *Technological Forecasting and Social Change* 1229.

<sup>15</sup> Thomson and Boutilier, “Modelling and Measuring the Social Licence to Operate: Fruits of a Dialogue between Theory and Practice” (2011) *International Mine Management* 1, p. 2.

<sup>16</sup> *Ibid.*

<sup>17</sup> K Moffat and Airong Zhang, “The Paths to social licence to operate: an integrative model explaining community acceptance of mining” (2014) 39 *Research Policy*, 61.

and local communities as to how a business should operate<sup>18</sup> and further as a process of “fitting in and adapting to the prevailing social norms”.<sup>19</sup>

- 1.107 Rather than a simple binary framework in which a social licence either exists or is absent, Parsons, Lacey and Moffat have described a social licence as something that exists on a continuum. They suggested that a social licence involves expectations, which may shift over time. In this way, it is possible to conceive of a social licence that may be firmly established at one point in time, but may lose legitimacy as community standards develop. This version of the social licence applies comfortably to the greyhound racing industry. Because of an increased social focus on animal welfare and the giving of a higher priority to animal rights than was the case in earlier times, the legitimacy of the greyhound racing industry throughout the world and the strength of its social licence to operate has been declining for several decades. In many jurisdictions, legislatures have withdrawn the social licences of their commercial greyhound industries.
- 1.108 Since the second half of the 20th century, legal systems have increasingly recognised a positive duty on those responsible for the care of animals to meet the welfare needs of those animals. The catalyst for change in Great Britain was the 1965 report of the Brambell Committee. In some respects, Australia has been slower to impose these duties of care on the owners of or those handling animals. In particular, it has tolerated the slaughter of greyhounds to an extent rejected by most countries in the world.
- 1.109 Australia is one of only a small number of countries worldwide where a commercial greyhound racing industry is permitted to exist. Greyhound racing either does not exist on a commercial basis in many jurisdictions or it has been banned, as it was in South Africa, as long ago as 1949. Greyhound racing has also been banned in the vast majority of States in the United States of America (“USA”). In April 2016, Grey2K USA – a non-profit organisation which describes itself as the “largest greyhound protection organization in the world” – reported that only 19 dog tracks in six states remain in the USA. The six states in the USA where commercial greyhound racing then took place were: Alabama; Arizona; Arkansas; Florida; Iowa; and West Virginia. The last greyhound track in Texas closed on 1 January 2016. In mid-May, 2016, the Arizona legislature legislated to ban greyhound racing in that State by the end of 2016, making it the 40th state in the USA to do so.
- 1.110 So far as the Commission is aware, only the following countries host a commercial greyhound racing industry:
- Australia;
  - Mexico;
  - Macau (Special Administrative Region of the People’s Republic of China);
  - New Zealand;
  - Republic of Ireland;
  - United Kingdom (England, Scotland and Wales);
  - USA (limited to five States only); and
  - Vietnam.

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<sup>18</sup> Neil Gunningham, Robert Kahan and Dorothy Thornton “Social licence and environmental protection: Why businesses go beyond compliance” (2004) 29 *Law & Social Inquiry* 307.

<sup>19</sup> Parsons, Lacey and Moffat, “Maintaining discursive legitimacy of a contested practice: How the minerals industry understands its social licence to operate” (2014) CSIRO Resources Policy.

- 1.111 The Commission is also aware that greyhound racing takes place in several countries not listed above. However, greyhound racing does not appear to operate on a commercial basis or as a professional sport in those countries. In other words, it may not be legal to wager on greyhound racing or the industry may not be formally regulated (for example, as in Argentina and Chile, where races are organised locally by clubs). In continental Europe, the Czech Republic, Denmark, Finland, Germany and Sweden are each members of the “Continental Greyhound Racing Confederation”. However, those countries do not appear to host commercial, regulated industries on the scale of the countries like Australia or the other countries listed above.
- 1.112 In 2013, Grey2UK conducted a global review to determine how many countries host dog racing in some form. The review found that only eight countries host commercial industries and a further 21 countries host non-commercial dog racing. The trend appears clear: throughout the world, the social licences of the commercial greyhound industry are being withdrawn.
- 1.113 Applying the continuum framework formulated by Parsons, Lacey and Moffat to the greyhound racing industry in New South Wales, the Commission is of the view that the industry has lost the integrity-based trust of the community and other stakeholders. It could hardly be otherwise. That is because the greyhound racing industry has been exposed as an industry that:
- has implicitly condoned as well as caused, the unnecessary deaths of tens of thousands of healthy greyhounds;
  - has failed to demonstrate that in the future it will be able to reduce the deaths of healthy greyhounds to levels the community could tolerate;
  - has engaged in the barbaric practice of live baiting;
  - has caused and will continue to cause injuries to greyhounds that range from minor to catastrophic;
  - has treated greyhounds as dispensable commercial commodities;
  - has deceived the community concerning the extent of injuries and deaths caused during race meetings;
  - has preferred the commercial interests of the industry to the animal welfare interests of greyhounds;
  - has exported greyhounds to race in places such as Macau where animal welfare standards are very poor; and
  - has ignored or failed to recognise that the industry has obligations to the community that go beyond its strictly legal obligations.
- 1.114 It would be surprising if these failings of the industry had not destroyed the community’s trust in the industry. Moreover, these failings have occurred in a context where greyhounds in NSW are now primarily, almost exclusively, bred for commercial purposes - to race for prize money and to create gambling opportunities. The reality is that, for many, perhaps most, of those who participate in the industry - whether as punters, breeders, owners or trainers, greyhounds are commercial commodities, not animals to be cherished and loved.
- 1.115 The Commission accepts that many participants in the industry are animal lovers who care for their greyhounds. But especially for those whose interest in greyhounds is betting on their chance of winning races, the greyhound is simply a gambling instrument, no different from a card in a poker game or a handle on a poker machine.
- 1.116 The extent of wastage and live baiting suggests that the view of the greyhound as a commercial commodity is also widespread among breeders, owners and trainers. Greyhounds Australasia, the peak body of the industry, has said that in the industry profits have come before welfare. A

significant number of owners have exported greyhounds to jurisdictions where animal welfare standards are practically non-existent. GRNSW has conceded to the Commission that in the past its strategic planning for the industry has been weighted towards commercial considerations with animal welfare largely regarded as a hygiene factor.

1.117 The reality is that the industry has a dark side. The slaughter of many thousands of purpose-bred greyhounds long before they reach their normal life expectancy may be “just business” for many breeders, owners and trainers. But it is a cruel business.

1.118 The Commission accepts the analysis of the WDA when it declared:

Gambling on animal sports supplants attention on the welfare of the competitors with the financial interests of punters, which is foregrounded as the essential outcome of greyhound racing. Indeed, attendance at greyhound meets is less about the ability and skill of the dogs, even though the individual events can be thrilling, and almost entirely an opportunity to gamble, such that the success or enjoyment of the event is mediated through an individual’s profit. The gambling imperative is so great, that the greyhound itself is a marketable commodity. In the absence of acceptable progress in the sport or a suitably aggressive attitude, the dog can be written off as a loss. In this context, greyhounds are as expendable as the tens of thousands of young hopefuls who play soccer or basketball in the pursuit of a professional career. Unlike these youngsters, however, the non-viable dog is culled (and often killed).

1.119 The question then arises as to whether the shortcomings of the industry are outweighed by the economic and social benefits that it brings to the State so as to justify the continuation of the industry. The benefits that the industry brings to the State are chiefly, but not exclusively, economic. Accepting the Access Economics figures - which may be too high - the benefits include:

- \$92.3 million as a direct economic contribution to the State;
- \$51.9 million in flow on benefits to the State including \$24.4 million through breeding and \$12 million through training of greyhounds;
- \$31 million in tax revenue for the State;
- 1086 direct full-time equivalent employment positions;
- 475 indirect full-time equivalent employment positions;
- The pleasure afforded to 13,000 persons who participate in the industry as breeders, owners, trainers and employees;
- The pleasure arising from the opportunity to watch the racing which is highly competitive;
- The pleasure involved in wagering on the outcome of races; and
- The contribution to the social fabric of country towns where greyhounds race or are trained.

## Has the industry changed since February 2015?

1.120 The Commission accepts that GRNSW today is not the organisation that it was as at February 2015. Under the leadership of Mr Paul Newson, the interim Chief Executive, GRNSW has undergone significant change, most of it for the better.

1.121 The former Board and some management employees are no longer with GRNSW. The management structure itself has been radically changed. GRNSW now has a Leadership Group that appears to be capable of governing and managing the industry as well as it can be governed and managed. However, Mr Newson’s position is as interim Chief Executive only and GRNSW will

be unlikely to retain his services. Further, some of the new management group have already left GRNSW. Others may follow.

- 1.122 GRNSW presently has access to potential funding that previous Boards and management did not and are able to carry out reform that was probably beyond the financial ability of GRNSW before February 2015. Nonetheless, as succeeding Chapters of this Report show, the Commission regards many of the reforms since February 2015 as falling short of what is needed to improve the industry. It has criticised some of these “reforms” (eg the Breeders Education Pack). Moreover, in some areas the Commission is of the view that there remains an absence of reform that is needed. But that said, what GRNSW has achieved since February 2015, what it is doing, and plans to do deserves praise.
- 1.123 Achieving appropriate animal welfare outcomes is no longer a mere aspiration of GRNSW, which it was to an extent as at February 2015.
- 1.124 Animal welfare outcomes are now the driving force behind GRNSW’s activities. No longer can it be argued that, under its present management, the commercial interests of GRNSW trump animal welfare interests. Furthermore, GRNSW now recognises that its stakeholders go beyond industry participants and includes the wider community including animal welfare groups.
- 1.125 The Commission is satisfied, however, that, notwithstanding the efforts of GRNSW led presently by Mr Newson, the problems that the industry creates – particularly the extent of wastage in the greyhound racing industry - cannot be appropriately addressed at the present time. The Commission’s view is that, despite the best intention and efforts of the new management at GRNSW, it appears unlikely that the issue of the large scale killing of healthy greyhounds by the industry can be addressed successfully in the future.
- 1.126 Sustained vigilance may ensure that live baiting can never again be as extensive as it was as at February 2015. But the economics of the industry are such that the Commission is satisfied that the so-called wastage of greyhounds cannot be eliminated or substantially reduced at present and that it is doubtful whether it can be reduced in the future to an extent that the community might possibly regard as tolerable.
- 1.127 GRNSW has had 15 months to overcome the wastage problem and, in that period, has not been able to demonstrate that it has solved the pernicious problem of wastage. Moreover, not only is the rate of wastage unacceptable, as GRNSW has acknowledged, but the industry has an injury rate that is also unacceptable, as GRNSW also acknowledges.
- 1.128 The Commission accepts that some degree of wastage in the industry may be regarded as inevitable, but the Commission has seen no persuasive evidence that the massive killing of thousands of healthy greyhounds, currently occurring, can be reduced to a small number of deaths each year if the industry continues as a commercial industry. Whether the community would regard even a figure of 500 deaths each year as an acceptable level is debatable. Understandably, GRNSW has not proffered an estimate of what it thinks is achievable. In its latest submission, it stated that it “is not currently in a position to provide an evidence-based response on the extent to which a reduction in the number of race meetings would reduce the percentage incidence of wastage in the industry (that is, wastage as a percentage of dogs bred)”.
- 1.129 Ultimately, it must be a matter for the Parliament of NSW to determine what an acceptable level of wastage is and what is an acceptable rate of on-track and trial injuries.
- 1.130 In its submissions to the Commission, GRNSW has argued that it “should be provided with a period of time, representative of a further opportunity to continue its work in relation to animal welfare, to demonstrate to the State government, and the broader community, that the industry

can be conducted in a way where the historic dual evils of overbreeding and wastage can be reduced to a level consistent with the standards of reasonable community members.”

- 1.131 GRNSW is faced with the dilemma that to reduce wastage it must reduce the number of dogs required to meet its race meeting schedules each year while reducing meetings will have serious financial consequences for industry participants. Fewer meetings would seem to have the inevitable consequence of less TAB and Race Fields Information Use revenue and less prize money and a lesser spread of prize money for the industry participants. It would also have consequences for the economies of those towns and areas that would no longer hold race meetings.
- 1.132 GRNSW pointed out that its “current proposed position for the future of the code is however to bring to an end all non-TAB racing and to focus on solely on TAB racing in NSW”. It told the Commission that “its own internal preliminary financial modelling based on a reduction of race meetings to 593 per year...suggests the industry would be financially viable if that number of meetings was to take place”. This would be on the basis of only 10 greyhound racing clubs operating in NSW.
- 1.133 As pointed out in Chapter 13, holding 593 meetings each year would require 56,335 starters. Based on the average of 24 starts per greyhound, to hold 593 meetings would require 3,912 pups to be whelped each year given that 40% of them will never race. On present wastage rates, nearly 2,000 dogs from 3,912 whelpings would be euthanased each year. If wastage rates could be reduced from the present 40% to 30%, the number euthanased each year would be 1,174; if it could be reduced to 25%, the number euthanased each year would be 978.
- 1.134 Even if GRNSW was to reduce its racing schedule to 593 meetings each year, it seems inevitable that wastage in the industry must remain at high levels. As will also be pointed out in Chapter 13, the Commission has concerns whether the industry would be viable with meetings limited to 593 per year. This is particularly so given the likely cost of future animal welfare expenditure.
- 1.135 In its Report, the JWG commented that “[i]t is widely agreed that the industry must successfully address [wastage] if it is to meet community expectations as being an ethical and humane industry.” The Commission recognises that, ultimately, it is a matter for the Parliament of NSW, as the representative of the community whether, on balance, the commercial greyhound racing industry has lost its social licence and should no longer be permitted to operate in this State or alternatively should be given a further period to show that it can appropriately address the issues confronting the industry. In the Commission’s view, the industry has failed to address the issue of wastage successfully and appears unlikely to do so in the foreseeable future. Applying the benchmark formulated by the JWG, a body set up by GRNSW, the commercial greyhound industry has failed community expectations that it is an ethical and humane industry. Permitting GRNSW a further period of time in which to attempt to demonstrate it can successfully address issues of overbreeding and wastage appears to the Commission to be likely to prove fruitless and, at the same time, continue to result in the deaths of many more thousands of healthy greyhounds.

## Recommendations

### RECOMMENDATION 1

Given the findings of the Commission concerning the management and governance of the greyhound racing industry, the Parliament of New South Wales should consider whether the industry has lost its social licence and should no longer be permitted to operate in NSW.

If the industry is permitted to continue, the Commission makes the following recommendations:

2. The Greyhound Racing NSW Rules of Racing (“Rules of Racing”)<sup>20</sup> should be amended to provide a penalty of disqualification for life for any person found to be involved in the practice of live baiting.
3. Section 21 of the *Prevention of Cruelty to Animals Act 1979* (NSW) should be amended to strengthen the offences of live baiting. The recommended amendments are detailed in Chapter 8.
4. The exemption in R 86C(5) of the Rules of Racing in relation to the keeping of live animals at or on premises where greyhounds are kept should not continue.
5. There should be a mandatory requirement that dogs which engage in the sport of lure coursing are registered as such on the NSW Register of Companion Animals for such period or periods of time during which they engage in the sport. The penalty for a failure to register them should be the same as that which applies generally in respect of a failure to have a companion animal registered on the NSW Register of Companion Animals.
6. Rule 86B(1)(c) of the Rules of Racing should be amended to extend the disciplinary offence to advertising, promoting or organising live baiting.
7. The exemption contained in R 106(4) of the Rules of Racing should not continue.
8. Greyhounds should be registered on the NSW Register of Companion Animals throughout their lifecycle.
9. Greyhound Racing NSW should amend its Privacy Policy to permit disclosure of a greyhound’s identity to those who have a legitimate interest in it, including RSPCA NSW, the Animal Welfare League, the NSW Police Force and local councils. Any new regulator should have a like policy.
10. The role of Greyhound Racing NSW, or the role of any new regulator, as Registration Agent under the *Companion Animals Act 1988* (NSW) (for the purposes of processing on the NSW Companion Animals Register the permanent identification, change of ownership details and lifetime registration information) should apply to all greyhounds and not just those undertaking approved retraining programs. Whether or not the regulator remains Greyhound Racing NSW, the regulator must update the NSW Companion Animals Register by reference to R 105 and LR 106 (3) notifications received by it.
11. To the extent possible, those who commit offences involving live baiting should be required to indemnify the prosecutor not only for the cost of conducting the prosecution but for the cost of the investigation which led to the commencement of proceedings.

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<sup>20</sup> References to the Rules of Racing include relevant national rules and local rules.

12. The *Greyhound Racing Act 2009* (NSW) should be amended to clarify, or any new Act establishing a new regulator should specify, its interrelationship with the *Prevention of Cruelty to Animals Act 1979* (NSW) and the *Prevention of Cruelty to Animals Regulation 2012* (NSW) as detailed in Chapter 8.
13. The *Greyhound Racing Act 2009* (NSW) should be amended to include a requirement that Greyhound Racing NSW consult with RSPCA NSW and other relevant welfare organisations when developing and amending regulations, rules and minimum standards relating to or potentially impacting on animal welfare. If a new regulator is established this should be contained in the Act establishing the new regulator.
14. The *Greyhound Racing Act 2009* (NSW) should be amended to include a provision that requires Greyhound Racing NSW and its stewards to report any serious or repeated breaches of an animal welfare-related rule or standard to RSPCA NSW or the Animal Welfare League. If a new regulator is established this should be included in the Act establishing the new regulator.
15. The *Greyhound Racing Act 2009* (NSW) should be amended to impose an obligation on Greyhound Racing NSW to report annually details of any proceedings brought for welfare related disciplinary offences including progress and outcomes. If a new regulator is established this should be included in the Act establishing the new regulator.
16. Private trial tracks should be licensed and subject to regular inspections by Greyhound Racing NSW or any new regulator. The *Greyhound Racing Act 2009* (NSW), or the Act establishing a new regulator, should make it compulsory to register private trial tracks. It should be a condition of the licence of a private trial track that the track should only be used by greyhounds that are owned or leased by the licensee.
17. The Rules of Racing should be amended to require private trial tracks to be maintained to a standard reasonably required by the regulator.
18. Officers of Greyhound Racing NSW or any new regulator should not be appointed authorised officers or inspectors under the *Prevention of Cruelty to Animals Act 1979* (NSW). Possible breaches of the *Prevention of Cruelty to Animals Act 1979* (NSW) and of other criminal laws concerning the welfare of greyhounds should be referred to RSPCA NSW, the Animal Welfare League or the NSW Police Force for investigation.
19. The Rules of Racing should specifically provide a range of penalties for welfare offences, as is now the case in relation to live baiting. The range of penalties should include suspension and disqualification for serious breaches and continuing or repeated breaches. If a statutory code of practice is introduced, the Rules of Racing must provide that a breach of that code is a breach of the Rules.
20. The Rules of Racing should be amended to prohibit the use of barking muzzles on any occasion.
21. The current R 106 Form should be kept in a form where essential information for lifecycle tracking can be extracted and entered into a readily accessible database. The regulator should have the current R 106 Form independently assessed for shortcomings. The R 106 Form should be such that transfers of greyhounds to third parties can be verified.
22. Rule 106 of the Rules of Racing should be amended to:
  - (a) Create an offence of providing false or misleading statements in relation to a notification of transfer or retirement.
  - (b) Require participants to supply further information as required by the regulator. A failure to do so should result in suspension until such information is provided.

23. Greyhound Racing NSW or any new regulator should put in place an audit plan whereby a statistically significant sample of R 106 Forms are verified each year. The results of the audit should be reported in its annual report.
24. The Rules of Racing should be independently reviewed, particularly in relation to race day welfare obligations to ensure that what they contain is adequate.
25. The power to compel the attendance of unlicensed persons and the production of documents should be exercised by the Supreme Court of NSW upon an application by the regulator or its delegates.
26. The Rules of Racing should be amended to make it clear that Greyhound Racing NSW or any new regulator has power to supply personal information to other authorities and will do so if requested.
27. Greyhound Racing NSW or any new regulator should not be given statutory powers of entry, search and seizure including the power to obtain and execute search warrants.
28. Greyhound Racing NSW or any new regulator should not be given a power to undertake covert, filmed surveillance activities.
29. The NSW Government should consider extending the offences in respect of which warrants can be obtained under the *Surveillance Devices Act 2007* (NSW) to the live baiting offences and the offence of aggravated animal cruelty contained in the *Prevention of Cruelty to Animals Act 1979* (NSW).
30. Greyhound Racing NSW or any new regulator should not be given the power to issue remedial directions that are enforceable in Court.
31. Greyhound Racing NSW or any new regulator should not be given the power to enter into undertakings with greyhound racing clubs that are enforceable in Court.
32. Greyhound Racing NSW or any new regulator should not be given a power to issue penalty infringement notices.
33. An enforceable Code of Practice containing minimum standards of care for greyhounds throughout their lifecycle should be established. The recommended amendments to the *Prevention of Cruelty to Animals Regulation 2012* (NSW) are detailed in Chapter 9.
34. The enforceable Code of Practice should require Greyhound Racing NSW or any new regulator as well as industry participants to maintain complete lifecycle records. The record should travel with the greyhound throughout its lifecycle.
35. Greyhound Racing NSW or any new regulator should be required to use all reasonable endeavours to enter into Memoranda of Understanding with RSPCA NSW and with the Animal Welfare League which properly reflect the roles and responsibilities of each organisation. This obligation should be enshrined in the legislation governing the regulator and performance should be monitored and audited each year at the cost of the regulator.
36. Greyhound Racing NSW or any new regulator should bear the costs of RSPCA NSW and the Animal Welfare League in their performance of obligations under the Memoranda of Understanding.

37. The *Greyhound Racing Act 2009* (NSW) should be amended to require Greyhound Racing NSW to include in its strategic plan the measures it will take, in the three years which follow, for the advancement of the welfare needs of greyhounds. A like provision should be contained in the Act establishing any new regulator.
38. Performance against future strategic plans must be the subject of an annual independent audit. The audit should occur prior to the publication of the annual reports and its results should be published in the relevant annual reports.
39. Section 9 of the *Greyhound Racing Act 2009* (NSW) should be amended to include, as a function of Greyhound Racing NSW, promoting the welfare of greyhounds across the industry. The Act should be further amended to impose a specific obligation on members of Greyhound Racing NSW to do likewise.
40. The Rules of Racing should be amended so that on-track veterinarians and the stewards have power to direct any industry participant who has the care or control of a greyhound at a race meeting or trial to take it to a veterinary clinic. The Rules of Racing should also be amended to require that any person who has been so directed provide evidence of compliance to the regulator within 48 hours. That evidence should be in the form of a certificate from a qualified veterinary practitioner which sets out what treatment was administered including whether the greyhound was put down. A breach of these Rules should be treated as a serious offence.
41. The Rules of Racing should be amended to impose an obligation upon industry participants to report to the regulator injuries not detected by the on-track veterinarian within 24 hours. If the injuries are serious, the regulator's Chief Veterinary Officer should have power to direct the person who has the care or control of the greyhound to take it to a veterinary clinic. That person should be required to report back in the same manner as referred to above.
42. As soon as it is reasonably practicable to do so, Greyhound Racing NSW, or any new regulator, should amend the Rules of Racing to introduce a requirement that greyhounds cannot be trialed at public trials without a veterinarian being present.
43. Greyhound Racing NSW or any new regulator should take steps to regulate the extent to which 'muscle men' can be involved in the treatment of greyhounds, if at all. It should be an offence under the Rules of Racing for a registered participant to engage a 'muscle man' for treating a greyhound contrary to the Rules.
44. Greyhound Racing NSW or any new regulator should assume direct responsibility for providing veterinary services at all NSW race meetings, whether held at TAB tracks or non-TAB tracks.
45. Greyhound Racing NSW or any new regulator should adopt the recommendations of the Nour Group Report "Review of greyhound racing veterinary services in New South Wales" as detailed in Chapter 17, except to the extent that they differ from any recommendation of the Commission.
46. Greyhound Racing NSW or any new regulator should take steps to ensure that formal training is provided for new on-track veterinarians and that they are given initial, on-track experience in the company of an experienced Greyhound Racing NSW veterinarian.
47. Greyhound Racing NSW or any new regulator should amend the Rules of Racing to provide that an on-track veterinarian is required to be in attendance for both the pre-race and post-race trials, whether they are at TAB tracks or non-TAB tracks.

48. A significant fee should be imposed upon the breeder of any greyhound which is transferable and recoverable by the last person who has the care and control of the greyhound before it is rehomed or has been retired as a pet of an industry participant. In the latter case the fee should not be recoverable for a period of two years.
49. The Greyhound Racing Rules of Racing should be amended to provide for the imposition of the fee detailed in recommendation 54. The fee should apply to all greyhounds whether or not they are named, registered or race.
50. The fee detailed in recommendation 54 should be set by Greyhound Racing NSW, or any new regulator. A fund should be established into which these fees must be deposited. The regulator should be required to apply any unclaimed funds to the Greyhounds As Pets (GAP) Program or other welfare measures.
51. Greyhound Racing NSW or any new regulator, in conjunction with Greyhounds Australasia, should continue to engage with the Federal Government with a view to increased action, by the Federal Government, in connection with the export of live greyhounds.
52. The NSW Government should make representations to the Federal Government to implement the recommendations of Greyhounds Australasia concerning the export of live greyhounds.
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.
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.
58. The Greyhound Racing Rules of Racing should be redrafted or amended to address the inaccuracies and deficiencies in content identified in Chapter 23
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' inquires) 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.

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.
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.
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 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 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 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 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.
- 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.



## 2 Conduct of the Special Commission of Inquiry

### Introduction

- 2.1 This Chapter describes the establishment of the Commission, and how it carried out its inquiry, consistent with its Terms of Reference.
- 2.2 The Commission was established following the exposure of the practice of live baiting of racing greyhounds by the Australian Broadcasting Corporation's *Four Corners* program in February 2015. Shortly after the broadcast of the program the NSW Government required the then members of the Board of Greyhound Racing New South Wales (GRNSW), and its Chief Executive Officer, to resign or have their appointments terminated.

### Appointment and Terms of Reference

- 2.3 The Honourable Michael McHugh AC QC was appointed Special Commissioner by Letters Patent issued in the name of the Governor of NSW on 4 March 2015, pursuant to the *Special Commissions of Inquiry Act 1983* (NSW). Amending Letters Patent dealing with the terms of reference were issued on 4 May 2015.
- 2.4 The amending Letters Patent require the Commissioner to inquire into and report on the following matters:
- A. Identify issues relating to the governance, integrity and animal welfare standards of the greyhound racing industry in NSW.
  - B. Review:
    - 1. the existing legislative framework for the greyhound racing industry in NSW including (but not limited to) the *Greyhound Racing Act 2009* (NSW), the Greyhound Racing Rules, the *Prevention of Cruelty to Animals Act 1979* (NSW), and associated legislative instruments, rules, policies, practices and procedures relevant to Greyhound Racing NSW ("GRNSW") and the Royal Society for the Prevention of Cruelty to Animals NSW ("RSPCA NSW");
    - 2. legislation in place, and practices which are currently employed, in other jurisdictions in relation to the greyhound racing industry and animal welfare standards;
    - 3. existing materials from the Legislative Council Select Committee and the Five Year Statutory Review of the *Greyhound Racing Act 2009*.
  - C. Evaluate:
    - 1. legislation, policy and practices in place in NSW including (but not limited to) those in relation to:
      - a. the management, supervision and registration of greyhound breeders, pre-trainers, trainers and others involved in these aspects of the greyhound racing industry;
      - b. the management and supervision of activities associated with greyhound racing such as the operation of trial tracks and training facilities; and

- c. breeding and animal welfare standards.
  - 2. best practices which are currently employed in NSW and other jurisdictions in relation to governance of the greyhound racing industry;
  - 3. contemporary best practice standards relating to the welfare of animals;
  - 4. key NSW government agencies' powers and capability to properly investigate alleged incidents of animal cruelty and effectively prosecute where appropriate;
  - 5. the merits of an independent integrity authority to oversee and regulate the greyhound racing industry; and
  - 6. whether the issues identified in Term A are able to be appropriately addressed, to permit the continuation of a greyhound racing industry in NSW that is sustainable and provides an ongoing economic and social contribution to the State.
- D. Identify contemporary best practice for adoption by the greyhound racing industry, including:
  - 1. overarching principles to be considered when any industry body makes decisions affecting the welfare of animals;
  - 2. standards to be adopted when an industry body makes a decision affecting the welfare of animals;
  - 3. appropriately robust industry supervision procedures; and
  - 4. the powers, capability and resourcing necessary for GRNSW, key government agencies or an industry regulator to:
    - a. provide governance to the greyhound racing industry;
    - b. ensure the integrity of the industry; and
    - c. detect, investigate and respond to suspected unlawful activity in the industry including (without limitation) animal cruelty and the practice of live baiting.
- E. Develop an improved model of governance of the greyhound racing industry, including (but not limited to):
  - 1. the appropriate structure of GRNSW, key government agencies or an industry regulator to regulate and investigate the greyhound racing industry and to enforce penalties and sanctions for breaches of law;
  - 2. the extent of the role of the NSW Government in the oversight of the greyhound racing industry;
  - 3. appropriate penalties and sanctions for those breaching legal requirements in relation to the greyhound racing industry; and
  - 4. appropriate changes to the *Greyhound Racing Act 2009* (NSW), the *Greyhound Racing Rules*, the *Prevention of Cruelty to Animals Act 1979* (NSW), and associated legislative instruments, rules, policies, practices and procedures relevant to GRNSW, the RSPCA NSW, key government agencies, and/or an industry regulator.
- F. In conducting the inquiry, the Commissioner:
  - 1. may consult with any person, agency or organisation;
  - 2. will call for public submissions and, to the extent necessary, conduct formal hearings; and

3. will have regard to the Quality Regulatory Services (QRS) Initiative articulated in the NSW Government's response to Industry Action Plans, including the requirements for outcomes focussed and risk based approaches to compliance and enforcement.
- 2.5 These amended Letters Patent provided for the Commissioner to report to the Governor on 30 September 2015. The report date was subsequently extended to 16 June 2016.<sup>21</sup>
- 2.6 Appendix C sets out the Letters Patent dated 4 March 2015, 4 May 2015, 16 September 2015, 30 March 2016 and 25 May 2016. The Terms of Reference are set out at Appendix B to this report.

## The Commission's personnel

- 2.7 Mr Stephen Rushton SC and Mr David Kell were appointed counsel assisting the Commission. The NSW Crown Solicitor, Ms Lea Armstrong, was retained as solicitor assisting the Commission. Ms Cheryl Drummy, special counsel, Ms Gillian Buchan, senior solicitor, Ms Marisa Wright Smith, senior solicitor, Mr Matthew Ashworth, solicitor and Ms Isabella Partridge, graduate solicitor, constituted the primary legal team. They were supported, at various times, by paralegals Ms Lucinda Bozic, Mr Dion Carnell, Ms Cassandra Nelson, Mr Benjamin Ng, and Mr Jake Reid. Ms Maria Lagoudakis and Ms Deborah Rana provided administrative support.

## Advertising the Inquiry

- 2.8 On Saturday 9 May 2015 and Wednesday 13 May 2015, the Commission placed an advertisement in major Australian newspapers announcing the public opening of the Commission on 10 June 2016, referring to the Terms of Reference, and calling for written submissions. See Appendix D.
- 2.9 The Commissioner made the same announcement in a major greyhound racing industry publication, the Greyhound Recorder, on Thursdays 14, 21 and 28 May 2015. The first public hearings, held between 28 September and 2 October 2015, were also announced in the Greyhound Recorder on 24 September 2015.
- 2.10 Media releases were issued on 19 May 2015 and 3 June 2015 to announce the public opening of the Commission. Further media releases were issued on 17 September 2015, 13 November 2015 and 11 February 2016 to notify the general public, including industry participants, of forthcoming public hearings of the Commission that commenced on 28 September 2015, 7 November 2015 and 17 February 2016, respectively.
- 2.11 The Commission, additionally, established an email communications list which comprised interested stakeholders including industry participants who had contacted the Commission, greyhound racing industry organisations and their media contacts, and staff from the offices of members of parliament who had expressed a particular interest in the Inquiry. Each were notified by the Commission of upcoming hearings, requests for submissions on specific topics, calls for information, and relevant procedural announcements.
- 2.12 Established on 14 April 2015, the Commission's website<sup>22</sup> was hosted by the NSW Department of Justice. Through it, the Commission was able to publish important information about the Inquiry, including the terms of reference, details relating to the public hearings (including practice notes and transcripts), request for information by way of responses to Issues Papers, and contact

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<sup>21</sup> See Letters Patent issued on 16 September 2015, 30 March 2016 and 25 May 2016, Appendix C.

<sup>22</sup> <http://www.greyhoundracinginquiry.justice.nsw.gov.au/>

details for providing submissions to the Commission. Exhibits from the public hearings were also posted on the Commission's website.

## Obtaining information

### Consultation

#### *The Inquiry Reference Group*

2.13 As part of GRNSW's initial internal review process, a group of relevant stakeholders had been engaged by GRNSW to participate in the review ("the Inquiry Reference Group"). Under the initial terms of reference, the Commissioner was required to consult with this group, consisting of:

- Mr Steven Coleman: RSPCA NSW Chief Executive Officer;
- Mr Paul Newson: GRNSW's Interim Chief Executive;
- Mr Ron Arnold: Chair of the Greyhound Racing Industry Consultation Group ("GRICG"); and
- NSW Police Force Assistant Commissioner Mark Jenkins.

2.14 The Commission sought details from each member of the Inquiry Reference Group, of issues they had identified in relation to governance, integrity and animal welfare issues in the industry and met with the group on 31 March 2015 to discuss these.

2.15 It became apparent that one or more of the bodies represented in the Inquiry Reference Group would likely be the subject of issues to be considered by the Commission and, consistent with the need to ensure the independence and integrity of the Inquiry, the Commissioner requested the removal of reference to the group from the Letters Patent. This was done. The amending Letters Patent dated 4 May 2015 provided that, in conducting the Inquiry, the Commissioner "may consult with any person, agency or organisation".

#### *Industry and welfare specialists*

2.16 The Commission consulted extensively with relevant persons and organisations, including industry and welfare specialists. This included meeting with:

- Paul Newson, GRNSW Interim Chief Executive, on 24 July 2015, 16 September 2015 and 21 April 2016;
- Dr Elizabeth Arnott, GRNSW Chief Veterinarian, on 16 October 2015;
- GRNSW officers and Dr Rod Ferrier, a corporate and forensic accountant, on 16 February 2016;
- Ron Arnold, Chair of the GRICG on 19 February 2016;
- Former GRNSW Integrity Auditor David Landa on 23 April 2015;
- Dr Brian Daniel, former GRNSW Head Racing Veterinarian, on 16 October 2015;
- Dr Linda Corney, former GRNSW veterinarian and currently a senior veterinarian and co-owner of a veterinary clinic, on 16 October 2015;
- Former GRNSW on-track veterinarian Dr Greg Bryant on 30 October 2015;
- Former GRNSW Deputy Chief Steward and A/Chief Steward Stephen Howard, on 25 June 2015;

- Bernie Carolan, Greyhound Racing Victoria (“GRV”) Chairman, on 31 July 2015;
- Dr Linda Beer, GRV Animal Welfare Manager, on 10 November 2015
- Steve Coleman, RSPCA NSW Chief Executive Officer on 24 July 2015;
- David OShannessy, RSPCA NSW Chief Inspector on 28 January 2016;
- RSPCA Australia’s Chief Science and Strategy Officer Dr Bidda Jones, Scientific Officer Dr Jade Norris and policy officer and university lecturer Jed Goodfellow on 5 November 2015;
- Dr Geoff Scarlett, Australian Veterinary Association NSW division president and Marcia Balzer AVA’s National Public Affairs Manager on 16 July 2015;
- Dr Leonie Finster, veterinary surgeon and former greyhound racing participant, on 30 October 2015; and
- Dr Karen Dawson, veterinary practitioner, member of the AVA’s policy council and former President of the Greyhound Rehoming Centre Inc., on 30 October 2015.

## Documentary records

- 2.17 In the course of its Inquiry, the Commission reviewed over 151,000 pages of documentary material and more than 115 hours of videos and other recordings. The Commission received and considered 804 submissions, comprising some 3,875 pages of submissions, and 59 responses totalling 628 pages to papers that the Commission issued seeking input about the breeding of greyhounds, the social contribution of greyhound racing, and governance of the greyhound racing industry in NSW.
- 2.18 The Terms of Reference also required the Commission to review existing materials from:
- the NSW Legislative Council’s 2014 Select Committee on Greyhound Racing in NSW (“the Select Committee”), which comprised 2 reports dated 26 March 2014 and 16 October 2014, and 1,027 submissions (2,967 pages); and
  - GRNSW’s Five Year Statutory Review of the *Greyhound Racing Act 2009* (“the Act”) which included 116 submissions (488 pages) and a report dated May 2015 (8 pages), which, in the circumstances of the Commission’s inquiries, did not make recommendations about the Act.

## Submissions

### *Initial written submissions*

- 2.19 In addition to the substantial submissions received from GRNSW, the Commission received submissions from a wide variety of organisations and individuals including the Greyhound Racing Industry Consultation Group (GRICG); the NSW Greyhound Breeders, Owners and Trainers Association (“GBOTA”) and individual and joint submissions from GBOTA branches; from greyhound racing clubs, greyhound racing advocates and greyhound racing journalists; from Harness Racing NSW; RSPCA Australia and the Animal Welfare League; from Greens MP the late John Kaye and the former Lord Mayor of Sydney; from Animal Law Committees, Animals Australia, Animal Liberation, Sentient – the Institute for Animal Ethics, Friends of the Hound Inc; and from international organisations including the Greyhound Protection League of New Zealand and GREY2K USA Worldwide.
- 2.20 The Commission’s website informed members of public that, if they had made a submission to the Select Committee which was published in full, they did not need to resubmit the submission

in order for the Commission to consider it. A number of people and organisations who had made submissions to the Select Committee provided additional submissions to the Commission.

- 2.21 A small number of submissions received fell outside the Commission's terms of reference, with a number of industry participants seeking advice or assistance about their interactions with GRNSW and interstate industry regulators. These people were informed of the appropriate review channels and/or where complaints could be made.
- 2.22 Unless tendered at the public hearings, none of the submissions was received as evidence.

### ***Issues papers***

- 2.23 The Commission published issues papers seeking input about areas of particular significance to its the terms of reference.
- 2.24 On 21 October 2015, the Commission published an Issues Paper on Overbreeding and Wastage ("the Breeding Issues Paper"). It sought views on the potential for the elimination or substantial reduction of 'wastage' in the greyhound racing industry in NSW ('wastage' being the term used to describe the destruction of healthy greyhounds bred for the purpose of greyhound racing but which are considered unsuitable for racing or further racing). Responses to this Issues Paper were required to be provided to the Commission on or before 23 November 2015.
- 2.25 On 9 December 2015, the Commission published a second Issues Paper, on Governance and Social Contributions. It sought, input about the social contribution the greyhound racing industry in NSW is said to make to the lives of participants and communities; and if the industry in NSW is to continue, whether its current structure, including its governance, is appropriate or whether an alternative model should be adopted. Responses to this paper were required on or before 15 January 2016.
- 2.26 The Commission received 59 responses (628 pages) to the Breeding and Governance and Social Contribution Issues Papers.

### ***Responses to notices of potential adverse findings***

- 2.27 After the conclusion of the Commission's public hearings, GRNSW and particular individuals, including some current and former officers of GRNSW received notices of potential adverse findings and were provided with the opportunity to make written submissions in response to such notices. The Commission was assisted by the provision of these responses and had close regard to them for the purposes of this report.

## **Orders to produce documents and information**

- 2.28 Much of the documentation, other than submissions, that was considered by the Commission was obtained through use of the Commission's compulsory powers conferred by the *Special Commissions of Inquiry Act 1983* and the Letters Patent.
- 2.29 Commission personnel reviewed a very large quantity of documents produced in response to Orders issued before, during and after the public hearings.
- 2.30 Some information and documentation was voluntarily provided, upon request, by GRNSW, RSPCA Australia and RSPCA NSW, Greyhounds Australasia ("GA"), the NSW Police Force, and the Commonwealth Department of Agriculture and Water Resources.
- 2.31 Where necessary, the Commission took further steps, including the issuing of Orders to ensure the completeness of the production.

- 2.32 The Terms of Reference required the Commission to consider industry governance, integrity and animal welfare issues including:
- the management, supervision and registration of greyhound racing participants and activities associated with greyhound racing such as the operation of tracks and training facilities;
  - breeding and animal welfare standards; and
  - whether issues identified in relation to these were able to be appropriately addressed, to permit the continuation of a greyhound racing industry in NSW that is sustainable and provides an ongoing economic and social contribution to the State.
- 2.33 Consequently, extensive investigation was required about the past and current operations of GRNSW, which resulted in multiple summonses being served on GRNSW over the entirety of the Inquiry, including when further issues came to the attention of, or were exposed by, the Commission. In total, 34 Orders were issued to GRNSW requiring the production of documents and information.
- 2.34 In total, some 112 Orders were issued to 60 organisations and 11 individuals; including 35 to the greyhound racing clubs in NSW and 17 to rehoming organisations. Appendix H lists the individuals and organisations ordered and/or summonsed to produce documents to the Commission.

## Hearing rooms

- 2.35 For its public and private hearings in 2015 and 2106, the Commission utilised hearing rooms in the Industrial Relations Commission building at 47 Bridge Street, Sydney.

## Witnesses

- 2.36 Counsel assisting determined which witnesses were to be called to give evidence at the private and public hearings and examined those witnesses. For the public hearings witness list, see Appendix I.

## The private hearings

- 2.37 During its initial investigative stage, the Commission held 43 private hearings across 11 days.
- 2.38 The private hearings were held to obtain and explore information it had received, primarily related to live baiting, but including governance and management issues, before considering what evidence should ultimately be led at the public hearings, thus filtering out evidence not otherwise of sufficient relevance. In this way, the private hearings offered a useful mechanism for ensuring efficiency in the conduct of the public hearings
- 2.39 Information obtained during private hearings informed the Commission generally about matters to be explored and provided background information. In some cases it also formed part of the evidence to which the Commission ultimately had regard for the purposes of this report. Thus, the transcript from the private hearing of Mr Anthony O'Mara was tendered during his appearance before the Commission in the public hearings, with his consent.
- 2.40 In addition, the Commissioner was required to consider the application of a witness, who gave evidence in private, that the witness should not be required to give evidence in public, for medical reasons. In granting the application, the Commissioner determined that, pursuant to powers available under the *Special Commissions of Inquiry Act*, the witness would be allocated a

pseudonym and that an anonymised version of their transcript of evidence would be published on the Commission's website and received as evidence in the public hearings.

## The public hearings

- 2.41 Given the nature of the matters at issue, the Commission determined that public hearings should be held, in part to provide transparency about the inquiries it was undertaking.
- 2.42 The public hearings were the means by which the Commission received evidence on which particular findings and conclusions in this report are based.
- 2.43 Twenty-six witnesses appeared before the Commission during the 10 days of public hearings. The public hearings were conducted from 28 September to 2 October 2015, 17 November 2015 to 19 November 2015; and on 17 and 18 February 2016.

## Practice and procedure relating to the public hearings

- 2.44 Before the public hearings began the Commission issued three Practice Notes in relation to its procedures:
- 'Practice Note 1—authorisation to appear at public hearings', which dealt with the process for authorisation to appear at the public hearings and related matters.
  - 'Practice Note 2—conduct of public hearings', which dealt with procedural matters relating to the public hearings.
  - 'Practice Note 3 – Legal representation of more than one person'.
- 2.45 Prior to the public hearings commencing, in accordance with Practice Note 1, the Commission received applications to appear generally at the public hearings. Until such time as the issues to be canvassed at the public hearings were identified, only GRNSW was granted such leave, being 'substantially and directly interested' all of the subject-matter of the inquiry.
- 2.46 While it was open to others to seek leave, or to seek to have their application reconsidered, only one witness made a further application after the public hearings commenced. As the Commission considered that person was substantially and directly interested in a subject-matter of the inquiry, authorisation was granted for him to appear before the Commission and be represented by counsel to participate in the public hearings including by examination and cross-examination of witnesses.
- 2.47 Each witness who sought to be represented by counsel or solicitors during the giving of their evidence, whether at private or public hearings was granted such leave.
- 2.48 Practice Note 2 was designed to facilitate the efficient control of proceedings while also ensuring procedural fairness.
- 2.49 Practice Note 3 was issued relating to applications by legal practitioners to appear for more than one person. A number of industry participants who were called to give evidence had sought advice from the same lawyers, from local areas or with experience of the greyhound racing industry. Additionally, a number of GRNSW employees were required to appear before the Commission. The Commission was generally reluctant to grant leave for a single legal practitioner or firm of lawyers to represent more than one person in the inquiry, because of, among other things, the high potential for conflicts of interest to exist, or to arise, which had the capacity to disrupt the orderly conduct of the Inquiry. For this reason, the Commissioner required written evidence about the purpose for seeking representation of that kind. Although enquiries were made of the Commission, no such application was made.

- 2.50 Appendix I sets out the individuals and organisations authorised to appear before the Commission.

### **Pseudonyms and non-publication orders**

- 2.51 It was, on occasions, necessary for the Commissioner to make pseudonym and non-publication orders under the *Special Commissions of Inquiry Act* to preserve the confidentiality of particular information relating to victims.
- 2.52 Although the Commission's approach to the public hearings was guided primarily by the principle of transparency, in some instances it was necessary to impose limitations on the publication of particular evidence.
- 2.53 The hearing of applications by witnesses seeking to be excused from giving evidence, or to have their evidence suppressed, were conducted in camera (in closed hearing).
- 2.54 In addition, the Commission was announced against the background of investigations being undertaken by RSPCA in NSW and other States, and by GRNSW, into allegations of live baiting, which is an offence under the *Prevention of Cruelty to Animals Act 1979* (NSW) ("POCTAA") and a breach of the GRNSW Rules of Racing ("the Rules").
- 2.55 Prior to, and during, the conduct of Commission, charges were brought against a number of persons for breaches of POCCTA. Where necessary, orders were made allocating pseudonyms, and non-publication orders were made, in order to ensure that criminal proceedings were not compromised.
- 2.56 In addition, pseudonym orders were made in limited instances where allegations were made of breaches of the Rules or POCTAA in circumstances where such persons had not been, and might not be, called to give evidence or have the opportunity to refute the allegations. If considered appropriate, these orders were later varied or revoked. This was consistent with the Commission's commitment to public transparency to the extent possible.

### **Publication of evidence**

- 2.57 The public hearings were regularly attended by GRNSW's interim Chief Executive, RSPCA NSW and the Animal Welfare League representatives, industry participants and members of animal welfare groups, members of the community and various media outlets from print and television.
- 2.58 The Exhibits tendered during, and after, the public hearings were published on the Commission's website.
- 2.59 The transcript of the evidence of each witness given during the public hearing was also published on the Commission's website.

### **Media liaison**

- 2.60 From the time of its announcement the Special Commission of Inquiry attracted media interest.
- 2.61 Through its media liaison officer, Mr Scott Crebbin, the Commission developed protocols for dealing with media organisations to ensure that information about the Commission and the Inquiry's processes — in particular, the public hearings — was provided to all media organisations that had registered their interest.

2.62 A pooled camera was operated to supply to television networks footage of the formal opening of the public hearing on 10 June 2015.<sup>23</sup> Mr Crebbin also facilitated prompt media access to public exhibits during the public hearings.

## Publication of the Commission's report

2.63 Section 10(3) of the *Special Commissions of Inquiry Act* allows for a recommendation to be made in relation to publication of the entirety or any part of a report.

2.64 The Commission's report consists of four volumes, all being 'public volumes'. The Commissioner recommends that these be published. The Commissioner takes this view given the significant, legitimate public interest in the work undertaken by the Commission and the subject matter of the public hearings in connection with terms of reference of significant relevance to a broad range of the public.

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<sup>23</sup> For the formal opening of the Commission of Inquiry on 10 June 2015, see Appendix G.

## 3 Live baiting

### Introduction

- 3.1 A significant matter in the lead up to the establishment of the present Commission was the broadcast on 16 February 2015 by the ABC of the *Four Corners* program, “Making a Killing”. The program revealed instances of live baiting of greyhounds in New South Wales, Queensland and Victoria. Hidden cameras captured graphic and disturbing footage of live animals – including rabbits, possums and piglets – being, in effect, mauled and killed by greyhounds at the command of their trainers. The animals were tied to mechanical lures before greyhounds chased, caught and savaged them.
- 3.2 The broadcast of the program caused a public outcry. It had far-reaching implications. Within a short time, the entire board of Greyhound Racing NSW (“GRNSW”) and its Chief Executive Officer, Mr Brent Hogan, had been dismissed or required to step down.
- 3.3 The Premier, Mr Baird, described the footage from the *Four Corners* program as “horrific” and stated that the government had “zero tolerance” for the type of animal welfare abuse revealed by the program.<sup>24</sup>
- 3.4 A small number of people that can be identified in the *Four Corners* footage that the ABC broadcast are, or were, the subject of prosecutions commenced for animal cruelty offences under the *Prevention of Cruelty to Animals Act 1979*.
- 3.5 As part of its terms of reference, the Commission is required to identify issues relating to the governance, integrity and animal welfare standards of the greyhound racing industry in NSW, and to identify contemporary best practice for adoption by the industry including in respect of the powers, capability and resourcing necessary for GRNSW, key government agencies or an industry regulator to detect, investigate and respond to suspected unlawful activity in the industry including animal cruelty and the practice of live baiting. It is also required to “[c]onsider whether the identified issues are capable of being appropriately addressed to permit the continuation of a greyhound racing industry in New South Wales that is sustainable and provides ongoing economic and social contribution to the State.”<sup>25</sup>
- 3.6 The practice of live baiting raises significant integrity issues for the industry. Persons who engage in the practice of live baiting do so believing that it will give their dogs a competitive advantage by being better racing dogs. Persons engage in the practice notwithstanding that it is both a criminal offence and an offence against the Greyhound Racing Rules that govern industry participants. Put simply, those who engage in the practice intend to cheat and defraud those owners and trainers who abide by the general law and the rules of greyhound racing.
- 3.7 The existence of the practice of live baiting severely taints the greyhound racing industry in NSW, both because of the barbaric cruelty involved and because it prevents a level playing field for industry participants, including punters.

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<sup>24</sup> Article entitled “Live baiting: Mike Baird vows ‘absolute zero tolerance’ for greyhound industry abuse” by Lisa Visentin, 17 February 2015, *Sydney Morning Herald*: <<http://www.smh.com.au/nsw/live-baiting-mike-baird-vows-absolute-zero-tolerance-for-greyhound-industry-abuse-20150216-13goy0.html>> (accessed 17 May 2016).

<sup>25</sup> Term of Reference B.

3.8 As an important part of its investigation, the Commission examined the practice of live baiting in the greyhound racing industry in NSW in private and public hearings. The Commission examined the extent of the practice until February 2015 when the public outcry from broadcast of the *Four Corners* program appears to have had the effect of ending the practice, at least temporarily, in New South Wales.<sup>26</sup> The Commission also examined the reasons why persons engaged in live baiting and whether the practice of live baiting had an effect on the ability of a greyhound to chase a lure. In addition, the Commission examined what were the substantial industry failings in dealing with the practice of live baiting. These aspects are described below.

### An “objectionable practice”

3.9 The history of legislation over the last two hundred years shows an increasing recognition by the civilised world that, without strong legislative intervention and vigilant supervision by regulatory bodies, greyhound coursing and racing inevitably fosters cruel and barbaric treatment of animals including the vast majority of greyhounds themselves. Live baiting is only one of the barbarous practices that have been historically associated with greyhound coursing and racing. As Mr Paul Newson, Interim Chief Executive of GRNSW, said in evidence, “as horrendous and shocking a conduct as that is, that is not the main game.”<sup>27</sup> He said that the over production of greyhounds and their unnecessary euthanasia is “the substantive issue” that the industry has to resolve. In subsequent Chapters of this Report, the Commission discusses this issue and other practices that must be stamped out if greyhound racing is to maintain its social licence. This Chapter, however, is devoted to the practice which led to the establishment of this Special Commission of Inquiry – live baiting.

3.10 In 1967, the Minister for Labour and Industry, when introducing legislation to prohibit the keeping of animals to be used for the training of greyhounds, referred to live baiting as an “objectionable practice”.<sup>28</sup> That was a serious understatement of the cruelty and gravity of the practice. It perhaps indicates that less than 50 years ago the inherent cruelty involved in live baiting was not fully understood and appreciated even at the highest political levels. Indeed, as late as 1953, the Parliament of this State allowed and arguably condoned live coursing which was simply another form of live baiting.

3.11 To understand fully the invidious practice of ‘live baiting’ – or, as it sometimes known, the ‘bleeding’ of greyhounds – it is useful first to understand the place of the greyhound in history, the development of the sport of ‘coursing’ involving greyhounds, the rise of greyhound racing on dedicated tracks, and the evolution of legislative provisions aimed at prohibiting, principally on cruelty grounds, coursing and practices involving the ‘bleeding’ of greyhounds using live animals, such as hares and rabbits.

## The greyhound – a brief history

3.12 The greyhound is, in relative terms, an ancient breed of dog, with a history closely linked to royalty and nobility. The breed can be traced back at least 5,000 years, and depictions of the greyhound are associated with the ancient Egyptians, the Greeks and the Romans.<sup>29</sup> The breed is also mentioned in the Bible.<sup>30</sup>

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<sup>26</sup> As at March 2016, GRNSW was investigating allegations of participants having engaged in live baiting at a NSW greyhound racetrack in October 2015: GRNSW Response to Order 28 dated 22 March 2016, [3].

<sup>27</sup> Paul Newson, 2 October 2015: T408.40-41.

<sup>28</sup> New South Wales, Legislative Assembly 1967, *Debates*, 5 December 1967 p 4127.

<sup>29</sup> Greenhounds website, “History”: <<http://www.greenhounds.com.au/education-learning/history.html>> (accessed 19 May 2016).

<sup>30</sup> Proverbs 30: 31. See also Adair Dighton, *The Greyhound and Coursing* (Grant Richards Limited, 1st ed, 1921) 11.

- 3.13 In Tudor times, King Henry VIII (1491-1547) kept greyhounds for hunting and coursing (pursuit of game), and adopted the greyhound as his personal standard.<sup>31</sup> Queen Elizabeth I (1533-1603), like her father Henry VIII, kept greyhounds and enjoyed greyhound coursing.<sup>32</sup>
- 3.14 The greyhound is also associated with early Australian colonial history. The English botanist Joseph Banks took two greyhounds with him on the *Endeavour* on its voyage, led by Captain Cook, to Australia in 1770.<sup>33</sup> In his writings, Banks referred to one of his greyhounds having chased and caught a small kangaroo or wallaby on shore at Botany Bay.<sup>34</sup>
- 3.15 Captain Arthur Phillip brought greyhounds on the First Fleet when it sailed into Botany Bay in 1778.<sup>35</sup> The dogs were to be used to hunt game.<sup>36</sup>

## The evolution of live baiting

### Coursing

- 3.16 Greyhounds are ‘sight hounds’.<sup>37</sup> As such, they rely primarily on keen eyesight,<sup>38</sup> speed and agility to hunt prey. Greyhounds can go from a standing position to speeds of up to 65 to 70 kph within a short space of time.<sup>39</sup>
- 3.17 Historically, ‘coursing’ is the practice of using dogs, such as greyhounds, for hunting and pursuing a live animal such as a hare. Although originally a means of hunting food or eliminating predators, over time coursing was adopted as a form of sporting entertainment. It was a sport associated with the aristocracy. As noted, greyhounds were traditionally associated with coursing, and used as such by Queen Elizabeth I (1533-1603). Rules in respect of the sport of coursing were introduced in time of Elizabeth I. They were drawn up by the Duke of Norfolk.<sup>40</sup> They included giving the hare a head start before the dogs were released or ‘slipped’.<sup>41</sup> The practices and rules of coursing changed over time.
- 3.18 The sport of coursing gained increasing popularity. Gentlemen matched their hounds against one another and wagered on the outcome. The greyhound was the dog most commonly coursed. Its speed became a focus of coursing matches. In 1776, the Earl of Orford established the first English coursing club at Swaffham, England. Other coursing clubs followed.<sup>42</sup>
- 3.19 The coursing events were public meetings typically held on large expanses of relatively open, unfenced grounds. If the area to be coursed was already well populated by hares, beaters would flush out hares to be used for the meeting. Alternatively, hares that had been trapped would be utilised. Some clubs bred and raised their own hares for coursing. The person releasing the

<sup>31</sup> Greenhounds website, “History”: <<http://www.greenhounds.com.au/education--learning/history.html>> (accessed 19 May 2016).

<sup>32</sup> Cynthia Branigan, *The Reign of the Greyhound* (Howell Book House, 1st ed, 1997), 152.

<sup>33</sup> Series 03: The Endeavour journal of Joseph Banks, 25 August 1768 - 12 July 1771 – referenced at <[http://www2.sl.nsw.gov.au/banks/series\\_03/03\\_view.cfm](http://www2.sl.nsw.gov.au/banks/series_03/03_view.cfm)> (accessed 19 May 2016); Cynthia Branigan, *The Reign of the Greyhound* (Howell Book House, 1st ed, 1997) 125.

<sup>34</sup> Neil Chambers, *The Letters of Sir Joseph Banks: A Selection, 1768-1820* (World Scientific Publishing Company, 1st ed, 2000) 15.

<sup>35</sup> Cynthia Branigan, *The Reign of the Greyhound* (Howell Book House, 1st ed, 1997) 125.

<sup>36</sup> Jane Duckworth, *Not Every Dog Has His Day: The Treatment of Dogs in Australia* (Axiom Creative Enterprises, 1st ed, 2009) 250.

<sup>37</sup> Other sight hounds include whippets, afghan hounds and borzois.

<sup>38</sup> By contrast, ‘scent hounds’, such as bloodhounds and beagles, primarily hunt by smell.

<sup>39</sup> Greenhounds website, “What is a Sighthound”: <<http://www.greenhounds.com.au/about-greyhounds/what-is-a-sighthound.html>> (accessed 19 May 2016).

<sup>40</sup> Adair Dighton, *The Greyhound and Coursing* (Grant Richards Limited, 1st ed, 1921) 14-15.

<sup>41</sup> Jordan Curnutt, *Animals and the Law* (Contemporary Legal Issues, 1st ed, 2001) 250. The original British coursing rules are reproduced at <<http://www3.sympatico.ca/afghaned/origrse.html>>.

<sup>42</sup> Regency Redingote Website, “The Gentlemanly Sport of Coursing”: <<https://regencyredingote.wordpress.com/2010/05/14/the-gentlemanly-sport-of-coursing/>> (accessed 20 May 2016). See also Adair Dighton, *The Greyhound and Coursing* (Grant Richards Limited, 1st ed, 1921).

greyhounds (the 'slipper') had to be careful to ensure that each dog saw the hare that was to be chased and that he did not release the dogs too early lest they overtake the hare too quickly. The pursuit of the hare could cover as much as three to five miles. On occasions, the hare would evade the greyhounds. Spectators, including members of the aristocracy, would observe the event.<sup>43</sup>

3.20 At the coursing meeting, a match judge would assess the speed and skill of the greyhounds in pursuit of the hare. The judge would assess the dogs on how well they anticipated and responded to the movements of the hare along the course and, if the hare was caught and killed, the extent of their respective involvement in making the kill possible. The winning greyhound from each match was typically then matched against other winning dogs as the coursing meeting progressed until an ultimate winner was determined. A cup or other trophy, and prize-money, would typically be awarded. Persons in attendance at the coursing meeting would often wager on the events. By 1858, all clubs in England followed a uniform, national code of coursing rules.<sup>44</sup>

3.21 In Australia, a coursing club was established in Victoria in 1873. It adopted the then English rules. Soon after, a coursing club was established in New South Wales. By 1878, a national coursing club of Australasia had been founded. At its peak, coursing attracted crowds of thousands of spectators.<sup>45</sup>

3.22 In 1928, Street CJ described the sport of coursing as follows:

Dr Johnson, in his dictionary, defines coursing as "the sport of hunting hares, foxes, and sometimes deer, with greyhounds"; and in the Oxford Dictionary it is defined as "the sport of chasing hares or other game with greyhounds by sight." Coursing of that character is a well known sport of great antiquity, and, in 1912, when the Gaming and Betting Act was passed, the only sport known by the name of coursing carried on in New South Wales was the pursuit of a living hare by two greyhounds. It was a very popular form of sport, both in England and elsewhere, and it was at one time carried on over open and unenclosed country. This, in course of time, gave place to enclosed grounds, which, though not so satisfactory, as I understand, from the point of view of the development of the traditional characteristics, other than speed, of dogs of the true greyhound breed, were still large enough to enable a real chase to be had and to afford room for the hare to turn and twist and double back upon its pursuers, and so to enable the dogs to display their cleverness and dexterity, as well as their speed, in the pursuit of living game. ... the winning dog was the one which did most towards the killing of the game pursued – in modern days invariably a hare – and ... there was a recognized code to go by for determining the merits and the skill displayed during the pursuit.<sup>46</sup>

3.23 The popularity of public coursing declined with the advent, and increasing popularity, of greyhound racing on tracks.<sup>47</sup>

3.24 In 1953, Mr C A Kelly, Colonial Secretary, on the second reading of the Prevention of Prevention of Cruelty to Animals (Amendment) Bill 1953 (NSW), which introduced specific offences relating

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<sup>43</sup> Regency Redingote Website, "The Gentlemanly Sport of Coursing": <<https://regencyredingote.wordpress.com/2010/05/14/the-gentlemanly-sport-of-coursing/>> (accessed 20 May 2016). See also John Walsh, *The Manual of British Rural Sports: The Pursuit of Wild Animals for Sport* (1856), pp. 155-161, 211-212.

<sup>44</sup> Regency Redingote Website, "The Gentlemanly Sport of Coursing": <<https://regencyredingote.wordpress.com/2010/05/14/the-gentlemanly-sport-of-coursing/>> (accessed 20 May 2016).

<sup>45</sup> Jane Duckworth, *Not Every Dog Has His Day: The Treatment of Dogs in Australia* (Axiom Creative Enterprises, 1<sup>st</sup> ed, 2009) 251. See also Alan Sharpe, *Pictorial History Blacktown and District* (Kingsclear Books, 1st ed, 2000) 102.

<sup>46</sup> *Kelso v McLachlan* (1928) 28 SR (NSW) 510, 514.

<sup>47</sup> Article entitled "Before Crowds watched Dogs killing Hares, they cheered Men Killing Men" by Richards, A, *News (Adelaide)*, 7 June 1947.

to coursing in NSW (discussed below), said: “I understand that live hare coursing has dwindled to a great extent and that few people are following it.”<sup>48</sup>

### Greyhound racing on tracks and with an artificial lure

- 3.25 Racing of greyhounds involving a straight track (utilising an artificial lure) reportedly first took place in Hendon, England in 1876.<sup>49</sup> Initially at least, it was not met with enthusiasm by coursing aficionados, who were dismissive of the concept of a winning dog simply being the one that reached the target first, without reference to matters such as the agility or cleverness of the dog.<sup>50</sup>
- 3.26 Greyhound racing on circular or oval tracks developed in the USA. It was facilitated by the invention in 1912 of a mechanical hare by Owen Patrick Smith. The lure consisted of a stuffed rabbit skin attached to a motor that ran around a rail on the outside of a circular track, which Smith dubbed the ‘Inanimate Hare Conveyor’.<sup>51</sup> The modern form of greyhound racing, involving an oval track, is said to have begun in California in 1919.<sup>52</sup> It was sometimes known as ‘speed coursing’ and involved a number of dogs (typically 8 or 10) chasing a mechanical hare.<sup>53</sup> It quickly grew in popularity, and expanded to other States, largely founded upon a system of pari-mutuel betting (also known as the tote or totalisator)<sup>54</sup> originally developed for horse racing.<sup>55</sup>
- 3.27 In England, the first circular/oval greyhound track was built and the first race conducted in 1926. The sport flourished in the UK. By 1928, 68 stadiums were either planned or operating.<sup>56</sup>
- 3.28 By 1927, greyhound racing, using a mechanical lure (‘tin hare’) on a circular/oval track, was operating in Australia. The Greyhound Coursing Association (GCA) was formed to promote the sport of ‘tin hare’ racing. The first race took place at Epping Racecourse (later known as Harold Park) under lights, on 28 May 1927.<sup>57</sup> The night-time greyhound races at Harold Park were advertised as ‘the Sport of the Masses’. They were very popular, with crowds of 20,000 to 30,000 regularly attending night meetings at which many bookmakers operated.<sup>58</sup>
- 3.29 Various groups, including the Churches and the Mothers’ Union, opposed betting on tin hare racing, based in part on the deleterious effects of gambling.<sup>59</sup> In 1928, however, the Bavin conservative government amended the *Gaming and Betting Act 1914* (NSW) to prohibit betting after sunset, which adversely affected the holding of greyhound race meetings. In 1930, a Labour government under Premier Lang enacted legislation legalising gambling at race meetings, claiming that the previous government’s approach was designed to rob the working man of his simple pleasures.<sup>60</sup>

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<sup>48</sup> New South Wales, Legislative Assembly 1953, *Debates*, 1 December 1953 p 2475.

<sup>49</sup> James Matheson, *The Greyhound: Breeding, Coursing, Racing etc* (Hurst and Blackett, 1st ed, 1929) 11; Jordan Curnutt, *Animals and the Law* (Contemporary Legal Issues, 1<sup>st</sup> ed, 2001) 250.

<sup>50</sup> Jordan Curnutt, *Animals and the Law* (Contemporary Legal Issues, 1<sup>st</sup> ed, 2001) 250.

<sup>51</sup> *Ibid.*

<sup>52</sup> Mary Mountier, *How to Pick a Winner (The Ginger Series)* (Awa Press, 1st ed, 2004) 37.

<sup>53</sup> Jane Duckworth, *Not Every Dog Has His Day: The Treatment of Dogs in Australia* (Axiom Creative Enterprises, 1<sup>st</sup> ed, 2009) 251.

<sup>54</sup> A betting system in which all bets of a particular type are placed together in a pool. The track-take and any applicable taxes are removed and, in effect, the payoff odds are calculated by sharing the pool among all winning bets.

<sup>55</sup> Jordan Curnutt, *Animals and the Law* (Contemporary Legal Issues, 1<sup>st</sup> ed, 2001) 251.

<sup>56</sup> Ian Zaczek, *Dogs, Facts, Figures and Fun* (AAPPL Artists and Photographers Press Ltd, 2006) 41.

<sup>57</sup> Alan Sharpe, *Pictorial History Blacktown and District* (Kingsclear Books, 1st ed, 2000) 102; Max Solling, ‘Wentworth Park – its History and Uses’, (Speech given at the Wentworth Park Community Game Day, Glebe, 18 May 2009). See also Greenhounds website, ‘History’: <<http://www.greenhounds.com.au/education-learning/history.html>> (accessed 19 May 2016).

<sup>58</sup> Max Solling, ‘Wentworth Park – its History and Uses’, (Speech given at the Wentworth Park Community Game Day, Glebe, 18 May 2009).

<sup>59</sup> Article entitled ‘From Early Uproar, greyhound racing blossomed in Tweed’ by Di Miller, 5 February 2011, *Tweed Daily News*: <[https://www.thedogs.com.au/Uploads/Userfiles/4\\_%20Tweed%20Heads.pdf](https://www.thedogs.com.au/Uploads/Userfiles/4_%20Tweed%20Heads.pdf)> (accessed 19 May 2016).

<sup>60</sup> *Ibid.*

- 3.30 Some persons apparently believed that tin hare racing would remove the need or incentive to train greyhounds to run faster using live bait.<sup>61</sup> Contrary to such expectations, subsequent experience has revealed many instances of greyhound trainers using live bait to do so. Moreover, from an early point in time RSPCA officers cautioned that mechanical hare racing merely eliminated cruelty to a live hare during an actual race, and did not remove the cruelty to animals, such as hares, used in the training of greyhounds.<sup>62</sup>
- 3.31 In July 1938, the NSW government issued a second greyhound racing licence for the Sydney area and, in 1939, greyhound race meetings commenced at Wentworth Park with totalisator betting facilities. By 1938, there were 45 greyhound race tracks in non-metropolitan NSW.<sup>63</sup>
- 3.32 Greyhound racing in NSW was regarded as a working class sport, with workers holding hopes of owning a dog that would bring them fame and fortune.<sup>64</sup> Races at night, low admission charges and the ability to place small bets were also attractive to the working class.<sup>65</sup>
- 3.33 The legalising of off-course betting, with punters able to bet on races through the TAB, increased the reach and popularity of the sport.<sup>66</sup>

## Legislative reaction to coursing and ‘bleeding’ of greyhounds in NSW

- 3.34 The second half of the 19<sup>th</sup> century and the 20<sup>th</sup> century saw increased disquiet among sections of the community and legislators concerning animal cruelty. Over time, concern on the part of legislatures extended to both the coursing and bleeding (‘live baiting’) of greyhounds. Legislation was introduced, in NSW, which had the effect of prohibiting such practices. As will be seen, such provisions – most recently incorporated in the *Prevention of Cruelty to Animals Act 1979* – were well established in NSW by at least 1953.
- 3.35 Indeed, ‘live baiting’ per se (as distinct from coursing) is properly viewed as capable of having been an offence in NSW since at least 1901, under the general cruelty/ill-treatment provision of the 1901 *Prevention of Cruelty to Animals Act*<sup>67</sup> and successor legislation.<sup>68</sup>

## NSW legislative developments

### 1850 Act

- 3.36 NSW Act no. 40 of 1850 – entitled “An Act for the more effectual prevention of cruelty to animals” – contained a general offence provision providing that a person must not “cruelly beat, illtreat ... abuse or torture ... any animal” (or cause or procure such conduct): s 1. As enacted in 1850, the Act defined an “animal”, for the purposes of the Act, in specific terms that would not include a wild rabbit or hare: s 21. In 1899, however, the definition of “animal” in the 1850 Act was expanded to mean “any species of quadruped, and every species of bird, whether in a natural or domestic state”.<sup>69</sup>

<sup>61</sup> Article “Use of Mechanical Hare has Advantages” by Reed Porter, *Sporting Globe*, 8 December 1945.

<sup>62</sup> Article “Society Opposes Dog Racing in Victoria”, *The Daily News (Perth)*, 5 March 1949.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Paul Tracey, ‘Going to the Dogs! Labor and “Tin Hare” Racing’ (Winter 1998) 2 *The Hummer* 10: <<http://asslh.org.au/hummer/vol-2-no-10/dogs/>> (accessed 19 May 2016).

<sup>66</sup> *Ibid.*

<sup>67</sup> *Prevention of Cruelty to Animals Act 1901* (NSW) s. 4(1).

<sup>68</sup> See *Jenkins v Ash* (1929) 141 LT 591; *Re Appeals of Ingram* (1970) 2 DCR (NSW) 259.

<sup>69</sup> *Prevention of Cruelty to Animals Act Amendment Act of 1899* (NSW) s 1.

### 1901 Act

3.37 In 1901, the *Prevention of Cruelty to Animals Act 1901* replaced the 1850 Act. The 1901 Act contained a general offence, s 4(1), relevantly providing that whosoever “cruelly illtreats or cause or procures to be cruelly illtreated any animal”<sup>70</sup> shall upon conviction, be liable to a fine or imprisonment for a term not exceeding three months.<sup>71</sup>

### 1943 amendments

3.38 In 1943, Parliament enacted the *Prevention of Cruelty to Animals (Amendment) Act 1943*, which amended aspects of the 1901 Act.

3.39 The amending Act contained provisions referring to – but not prohibiting – the sport or practice of coursing. Thus, the amending Act inserted a new s 4(1) to the 1901 Act, sub-paragraph (k) which relevantly provided that whosoever “except for medicinal or curative purposes administers or causes to be administered any drug or toxic or noxious substance to any animal entered or about to partake in any race or upon any racecourse or upon any ground used for coursing or the running or racing of dogs” would, upon conviction, be guilty of an offence (and liable to a fine or imprisonment for a term not exceeding six months).

3.40 In addition to s 4(1)(k) of the 1901 Act, as amended by the 1943 Act, the sport of coursing was also recognised in legislation dealing with betting. Thus, the *Gaming and Betting Act 1912*, as amended, provided that betting or wagering on any ground not being a licensed race course or coursing ground approved by the Minister on which sports are held was prohibited. Related provisions of the *Gaming and Betting Act 1912*, as introduced in 1938, similarly contemplated that coursing was not, of itself, unlawful.<sup>72</sup>

### Coursing per se not prohibited in NSW before 1953

3.41 In *Appeal of Redman* (1949) 49 SR (NSW) 360 (NSWCCA, Jordan CJ, Maxwell and Owen JJ), Redman appealed from a conviction under s. 4(1)(a) of the *Prevention of Cruelty to Animals Act 1901* that he cruelly ill-treated a hare. Redman acted as a ‘slipper’ – the person who released the two greyhounds to chase the hare – at an organised coursing meeting. The hare was released about 120 yards from the position where the greyhounds were slipped. It was accepted that the coursing ground was wide enough to give the hare an opportunity of baffling the greyhounds by turning and doubling in its course, as well as giving the greyhounds opportunities to display their skill in the chase, in addition to their mere speed. On the facts charged, the hare in question was killed.

3.42 On the hearing of the appeal, it was conceded that the coursing was conducted in the normal way for enclosed area coursing, and that the hare suffered no more cruelty or ill-treatment than was necessarily involved in coursing. Sir Frederick Jordan, delivering the judgment of the NSW Court of Criminal Appeal, reasoned that the references to the practice of coursing in s 4(1)(k) of the *Prevention of Cruelty to Animals Act 1901* and in the *Gaming and Betting Act 1912* (described above), which recognised coursing as a legitimate form of activity, meant that the conviction could not stand.<sup>73</sup>

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<sup>70</sup> *Prevention of Cruelty to Animals Act 1901* (NSW) s. 4(1)(a). Section 3 defined “illtreat” to include beat, overdrive, override, abuse and torture; and “animal” in broad terms as meaning “every species of quadruped and every species of bird whether in a natural or domestic state ...”

<sup>71</sup> The 1901 Act included provisions prohibiting specified conduct in connection with “fighting or baiting” any animal: *Prevention of Cruelty to Animals Act 1901* (NSW) s. 4(1)(b), (c) and (d). Coursing and live baiting of greyhounds using live hares or rabbits fastened to a moveable lure is not regarded as “baiting” of an animal: *Re Appeals of Ingram* (1970) 2 DCR (NSW) 259 at 264-265.

<sup>72</sup> See *Appeal of Redman* (1949) 49 SR (NSW) 360, 362 referring to ss 7, 47C(1)(a)(i) and 47E of the *Gaming and Betting Act 1912*. Note also *Kelso v McLachlan* (1928) 28 SR (NSW) 510.

<sup>73</sup> *Appeal of Redman* (1949) 49 SR (NSW) 360, 362.

3.43 Jordan CJ further said:

In my opinion, it necessarily follows that such distress or pain as is normally incidental to coursing carried on in the usual way cannot be regarded as cruelty or ill-treatment of the hare within the meaning of the Act. That is not to say that in a particular case coursing might not be conducted as to involve cruelty to the hare, but it is not suggested that there was anything special in the circumstances of the coursing the subject of the present prosecution.<sup>74</sup>

3.44 The Court allowed Redman's appeal and set aside his conviction.

3.45 Two matters relating to the practice of coursing should be noted. First, as recognised by courts, the practice of coursing, as carried out in the usual way, could in fact involve significant distress (and hence cruelty) to the hare involved. There was, however, a legislative acceptance of the practice of coursing, at least as carried out in the usual way, which precluded a conviction for animal cruelty on the part of participants.<sup>75</sup> In *Appeal of Redman* Jordan CJ referred to the cruelty or ill-treatment that "is necessarily involved in coursing"<sup>76</sup> and to the distress or pain that is "normally incidental to coursing carried on in the usual way."<sup>77</sup> Jordan CJ also referred that to the facts as found that "by the noise of the crowd, the clapping and the noise of the boys at the end of the lane, and the slipping of the dogs which chased and killed the hare, it was terrified, tormented, worried and momentarily suffered pain".

3.46 More than 30 years earlier in *Waters v Meakin* [1916] 2 KB 111, the English Divisional Court, while accepting the statutory recognition of the practice of coursing<sup>78</sup> – which had the effect of precluding a conviction of the respondent – nonetheless noted the inherent cruelty involved in coursing as conducted in the usual way. Thus, Ridley J observed "there was ample evidence to support the magistrate in his finding that unnecessary suffering was caused to the rabbits".<sup>79</sup> Bray J said, "I should much have liked to have decided this case in favour of the appellant. It is a very poor form of sport."<sup>80</sup>

3.47 Secondly, as noted in *Appeal of Redman*, acts of cruelty could arise in the conduct of coursing *other than* as conducted in the usual way and could be the subject of prosecution under the general animal cruelty offence provision.<sup>81</sup>

3.48 This is, in effect, what occurred in the English decision of *Jenkins v Ash* (1929) 45 TLR 479. The first respondent, Ash, had dangled a live wild rabbit by its hind legs in front of two leashed greyhounds, held by the second respondent, Green, some three to four yards away. The greyhounds were then taken twenty or thirty yards away. Ash threw the rabbit on the ground. The rabbit remained where it was thrown. Ash flicked it with his hat to make it run. It hopped a couple of yards and stopped. When the rabbit was thrown down, Green unleashed the greyhounds. They fell upon the rabbit and worried it. The rabbit was picked up and killed by a man soon after.

3.49 The magistrate dismissed the charges against the respondents on the basis that the conduct involved ordinary coursing and was thus, by the Act,<sup>82</sup> exempted from conviction. The Court (Lord Hewart CJ, Avory and Swift JJ) accepted the appellant/prosecutor's contention that the rabbit was cruelly ill-treated, by being dangled in front of the greyhounds, before it was released

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<sup>74</sup> Ibid.

<sup>75</sup> In the UK, s. 1(3) of the *Protection of Animals Act 1911* (UK) (when in force) expressly carved out coursing from the general animal cruelty provision in s. 1(1).

<sup>76</sup> *Appeal of Redman* (1949) 49 SR (NSW) 360, 361.

<sup>77</sup> *Appeal of Redman* (1949) 49 SR (NSW) 360, 362.

<sup>78</sup> *Appeal of Redman* (1949) 49 SR (NSW) 360.

<sup>79</sup> *Waters v Meakin* [1916] 2 KB 111, 115 (Justice Ridley).

<sup>80</sup> *Waters v Meakin* [1916] 2 KB 111, 119 (Justice Bray).

<sup>81</sup> *Appeal of Redman* (1949) 49 SR (NSW) 360, 362.

<sup>82</sup> *Protection of Animals Act 1911* (UK) s. 1(3).

for the purpose of being coursed and that when so released it was in an exhausted condition by reason of fright. The impugned conduct was outside the statutory protection given to coursing. It constituted ill-treatment of the rabbit and was an offence under s 1(1) of the *Protection of Animals Act 1911* (UK). In the course of his judgment, Avory J said:

If one knows anything about rabbits it is that they are so frightened by what they see that they may become paralysed from fright. I am satisfied that in this case this rabbit was paralysed from fright, and that, therefore, it could not be deemed to be coursed or hunted at all. In my opinion the learned magistrate ought to have convicted.<sup>83</sup>

### **Coursing prohibited in NSW in 1953**

- 3.50 In 1953, Parliament enacted the *Prevention of Cruelty to Animals (Amendment) Act 1953* that made the sport of coursing (using live animals to be coursed) unlawful in NSW. Section 4(1) of the principal Act – the 1901 Act – was amended so as relevantly to provide that whoever “promotes or takes part in coursing with a dog or dogs of any animal kept or released for the purpose of being coursed” could be guilty of an offence. In addition, references to coursing that had previously been in the 1901 Act – and which gave implicit statutory approval to the practice – were omitted from the Act.
- 3.51 The Explanatory Note to the 1953 Bill stated that the object of the bill was, relevantly, “to amend the Prevention of Cruelty to Animals Act, 1901-1952, and the Gaming and Betting Act, 1912-1951, to prohibit the coursing of live animals.”
- 3.52 In the second reading of the 1953 Bill, Mr C A Kelly, Colonial Secretary, referred to Rooty Hill as being the principal approved coursing ground for many years, of a great outcry raised about cruelty to animals at coursing meetings, and of steps being taken in recent times, by the National Coursing Association, to muzzle dogs in an (unsuccessful) attempt to overcome cruelty.<sup>84</sup>

### **Live-baiting – Parliament makes it an offence to keep animals to be used for purpose of training greyhounds – 1967**

- 3.53 In 1967, Parliament turned its attention to the practice of “blooding” (ie live baiting) of greyhounds. Prior to 1967, conduct involving live baiting of greyhounds would, under the existing animal cruelty general offence provision, constitute a criminal offence. However, Parliament saw fit to make an express, additional offence relating to the keeping of live animals to be used in training greyhounds.
- 3.54 By the *Prevention of Cruelty to Animals (Amendment) Act 1967*, Parliament relevantly amended s 4(1)(s) of the 1901 Act (the principal Act), so as to provide for the following (additional) offence provision:

4(1) Whosoever –

...

(s) promotes or takes part in the coursing with a dog or dogs of any animal kept or released for the purpose of being coursed or keeps or has in his custody, possession, care or control at any place used for the training or racing of greyhounds any animal for the purpose of using it in connection

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<sup>83</sup> *Jenkins v Ash* (1929) 141 LT 591, 594. This state has been referred to as “Tonic Immobility”; a “transitory and reversible state of profound motor inhibition” that is believed to be a “fear motivated terminal defense mechanism employed by prey animals, after other defense strategies have failed”; Anne McBride et al, “Trancing Rabbits: Relaxed hypnosis or a state of fear? (2006) Proceedings of the VDWE International Congress on Companion Animal Behaviour and Welfare. Flemish Veterinary Association, pp. 135-137

<sup>84</sup> New South Wales, Legislative Assembly 1953, *Debates*, 1 December 1953 p 2474.

with such training or racing, or keeps or has in his custody, possession, care or control at any other place any animal for the purpose of the training or racing of greyhounds

3.55 In the second reading for 1967 Bill, Mr Willis, Minister for Labour and Industry, said:

[The] amendment will make it an offence for any person to keep or have in his possession, at any place used for the accommodation, training or racing of greyhounds, any animal for the purpose of using it for such training or racing. It is already an offence to promote or take part in coursing with live animals, but it appears that the practice of using live animals in the training of greyhounds for the purpose of “blooding” the greyhounds is still prevalent.

Although the use of live animals for this purpose would constitute an offence against the general provisions of the Act – the offence of cruelly ill-treating an animal – there would be considerable difficulty in proving the offence unless someone witnessed it. It is hoped that the extension of the existing provisions of the Act in the manner I have outlined will assist materially in stamping out this objectionable practice.<sup>85</sup>

## Enactment of the Prevention of Cruelty to Animals Act 1979

3.56 In 1979, Parliament repealed the 1901 Act and replaced it with the *Prevention of Cruelty to Animals Act 1979*.

3.57 As enacted, s 21(1) of the 1979 Act provided:

- (1) A person shall not –
  - (a) promote or take part in an activity in which an animal<sup>86</sup> is used for the purpose of its being chased, caught or confined by a dog; or
  - (b) at a place used for the purpose of the activity referred to in paragraph (a) – keep an animal for the purpose of using it in connection with that activity.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) In any proceedings for an offence against subsection (1)(b), evidence that the person accused of the offence, while at a place used for the purpose of an activity referred to in subsection (1)(a), had an animal belonging to a prescribed species in his possession or custody, or under his care, control or supervision, is evidence that that person kept the animal at that place and at that time for the purpose of his using it in connection with that activity.
- (3) In any proceedings for an offence against subsection (1), the person accused of the offence is not guilty of the offence if he satisfies the court before which the proceedings are being taken that the act in respect of which the proceedings are being taken was done by that person in the course of, and for the purpose of, mustering stock animals.

3.58 The Explanatory Note to the 1979 Bill stated: “Clause 21 prohibits a person from using an animal for the purpose of its being chased by dogs.”

3.59 In the second reading of the 1979 Bill, Mr Crabtree, Minister for Lands and Minister for Services, said that the 1979 Act would repeal the 1901 Act and replace it with new legislation that re-enacts relevant existing provisions in modern terms, creates some additional offences, provides revised penalties and makes other variations from the existing Act to improve the welfare of animals.<sup>87</sup> The Minister further said:

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<sup>85</sup> New South Wales, Legislative Assembly 1967, *Debates*, 5 December 1967 p 4127.

<sup>86</sup> Section 4(1) defined ‘animal’ as a vertebrate animal, including a mammal, bird, reptile, amphibian or fish, but does not include a human being.

<sup>87</sup> New South Wales, Legislative Assembly 1979, *Debates*, 13 November 1979, p 2924.

The growing popularity of forms of racing not only with greyhounds but also with other breeds of dog, has resulted in a situation where it has become increasingly difficult to institute prosecutions for offences involving the use of other animals in dog racing and training because of inadequacies in the existing legislation.

As blooding is a carefully carried out activity, it is difficult to obtain evidence that a place is used for training, racing or exercising greyhounds. Most such places are closely guarded to ensure that strangers are not admitted. Accordingly, provision has been made in the bill to prohibit the use of any animal for the purpose of its being chased, caught or confined by a dog, and prohibit the keeping of any animal at a place used or intended to be used in that connection.<sup>88</sup>

3.60 Relevant to s 21, the Minister also said:

Clause 21 provides that it will be an offence to promote or take part in an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog; or at a place used or intended to be used, for the purpose referred to in paragraph (a), to keep any animal for the purpose of using it in that connection. This will extend s 4(1)(s) and 4(1c) to prohibit the use of all animals in the training and racing of dogs.<sup>89</sup>

3.61 In some respects, as enacted, s 21 was in narrower terms than its predecessor provision, s 4(1)(s) of the 1901 Act (which created an offence for keeping an animal to be used for the purpose of training greyhounds).

#### **1985 and 1987 amendments**

3.62 In 1985, Parliament amended the 1979 Act by inserting the word “advertise” before ‘promote’ in s 21(1)(a).<sup>90</sup>

3.63 In 1987, Parliament further amended the 1979 Act to increase the maximum pecuniary penalty for the offence under s 21 from \$1,000 to \$2,000.<sup>91</sup>

#### **Restructuring of s 21 in 1997**

3.64 In 1997, Parliament substantially restructured s 21 of the 1979 Act by the *Prevention of Cruelty to Animals Amendment Act 1997*. The revised form of s 21 read as follows:

Section 21 Coursing etc prohibited

- (1) A person who:
- (a) causes, procures, permits or encourages an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog, or
  - (b) advertises the intention to conduct such an activity, or
  - (c) promotes, organises or attends such an activity, or
  - (d) uses an animal as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog, or
  - (e) keeps or is in charge of an animal for use as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog,
- is guilty of an offence.

<sup>88</sup> New South Wales, Legislative Assembly 1979, *Debates*, 13 November 1979, p 2927.

<sup>89</sup> New South Wales, Legislative Assembly 1979, *Debates*, 13 November 1979, pp 2929-2230.

<sup>90</sup> *Prevention of Cruelty to Animals (Amendment) Act 1985* (NSW) Sch. 1 s. 2.

<sup>91</sup> *Prevention of Cruelty to Animals (Amendment) Act 1987* (NSW) Sch. 2 s. 4.

Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units or imprisonment for 2 years, or both, in the case of an individual.

- 3.65 Subsections (2), (2A), (2B) and (2A) comprised evidentiary provisions designed to facilitate the prosecution of offences under s 21(1).
- 3.66 In the second reading of the 1997 Bill, Mr Amery, Minister for Agriculture, said “Certain offence provisions under the Act need to be strengthened to ensure that the Act remains an effective means of preventing cruelty to animals. Proposals have therefore been included in the bill for enhanced provisions relating to the prohibition of animal fighting, the offence of using live lures for the coursing of racing dogs, and the offence of laying domestic animal baits.”<sup>92</sup>

### **2003 and 2005 amendments**

- 3.67 In 2003, Parliament amended the 1979 Act to increase the maximum pecuniary penalty under s 21 from 100 to 200 penalty units in the case of an individual and from 500 to 1,000 penalty units in the case of a corporation.<sup>93</sup>
- 3.68 In 2005, Parliament further amended the 1979 Act, relevantly to omit the word ‘used’ from s 21(1)(a) and replace it with “released from confinement”.<sup>94</sup> Section 23(3) was restructured and a new s 21(4) inserted.
- 3.69 In the second reading of the 2004 Bill, Ms Alison Megarrity, Parliamentary Secretary, said of the amendment to s 21(1):

The last amendment I wish to address concerns the prohibition in section 21 of the Act. This is the prohibition against sporting-type activities, such as coursing, where an animal is kept or confined and then released so dogs can chase, catch or confine the animal. There has been concern expressed that the word “used” in relation to a chased animal, which currently appears in section 21, could broaden the scope of the section so that vertebrate pest control and other legitimate activities are caught by the section. For example, it is possible that the section covers the chasing of rabbits by dogs to confine the rabbits in burrows before warren destruction, or it could cover the moving of sheep during dog trials or mustering.

To make sure that there is certainty as to the scope of the offence, the section is to be amended by replacing the word “used” with the more specific words “released from confinement”. In this way the offence will be limited to sporting-type activities where animals are kept and released to be chased, caught or confined by dogs.<sup>95</sup>

### **Current form of s 21 of the 1997 Act**

- 3.70 In its current form, applicable from 2005 to date, s 21 of the 1997 Act provides:

#### **21 Coursing and other similar activities prohibited**

- (1) A person who:
- (a) causes, procures, permits or encourages an activity in which an animal is released from confinement for the purpose of its being chased, caught or confined by a dog, or
  - (b) advertises the intention to conduct such an activity, or
  - (c) promotes, organises or attends such an activity, or

<sup>92</sup> New South Wales, Legislative Assembly 1997, *Debates*, 16 April 1997, p 7603.

<sup>93</sup> *Prevention of Cruelty to Animals Amendment (Penalties) Bill 2003* (NSW), Sch. 1 s. 3.

<sup>94</sup> *Prevention of Cruelty to Animals Amendment Act 2005* (NSW), Sch. 1 s. 3.

<sup>95</sup> New South Wales, Legislative Assembly 2004, *Debates*, 9 November 2004, p 12404.

- (d) uses an animal as a lure or kill for the purpose of bleeding greyhounds or in connection with the trialing, training or racing of any coursing dog, or
- (e) keeps or is in charge of an animal for use as a lure or kill for the purpose of bleeding greyhounds or in connection with the trialing, training or racing of any coursing dog,

is guilty of an offence.

Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units or imprisonment for 2 years, or both, in the case of an individual.

- (2) In any proceedings under subsection (1), evidence in writing by a veterinary practitioner that an animal was alive at the time of its attack by a dog is prima facie evidence that the animal was alive at the time of that attack.
- (2A) In any proceedings under subsection (1) (c), evidence that the defendant was present at a place at which an activity of the kind referred to in that subsection was being conducted is prima facie evidence that the defendant attended the activity.
- (2B) In any proceedings under subsection (1) (d), evidence that the defendant was in charge of an animal that appeared to have been used as a lure or kill in the manner referred to in that subsection is prima facie evidence that the defendant used the animal as a lure or kill in that manner.
- (2C) In any proceedings under subsection (1) (e), evidence that the defendant was in charge of an animal of a species prescribed by the regulations at a place used for the trialing, training or racing of any coursing dog is prima facie evidence that the defendant kept or was in charge of an animal for use as a lure or kill for the purpose referred to in that subsection.
- (3) It is a defence to any proceedings for an offence against subsection (1) if the defendant shows that the act constituting the alleged offence was done by the defendant in the course of, and for the purpose of:
  - (a) mustering stock, the working of stock in yards or any other animal husbandry activity, or
  - (b) sheep dog trials.
- (4) For the removal of doubt, section 24 (1) (b) (i), in its application to this section, includes hunting, shooting, snaring, trapping, catching or capturing an animal by using a dog, but only in a manner that inflicted no unnecessary pain on the animal.

3.71 Section 4(1) defines the term “animal” broadly as relevantly meaning “a member of a vertebrate species ...”. The expression “coursing dog” (ss 21(1)(d), (e), 21(2C) is not defined by the Act.

3.72 It is also apparent that an “animal” within the meaning of s 21(1)(d) means a live animal, not a dead carcass - such as a rabbit whose neck has recently been wrung shortly before being attached to a lure. See *Houghton v Nugent*.<sup>96</sup>

3.73 Section 24(1) provides certain defences to proceedings for an offence including that the conduct was undertaken in the course of, and for the purpose of, “hunting, shooting, snaring, trapping, catching or capturing the animal”: s 24(1)(b).

3.74 Section 21(2C) refers to the defendant being in charge of “an animal of a species prescribed by the regulations” at a place used for the trialing, training or racing of any coursing dog. Clause 8 of the *Prevention of Cruelty to Animals Regulation 2012* provides that “All species of animals that

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<sup>96</sup> *Houghton v Nugent* (Unreported, Supreme Court of Western Australia, Franklyn J, 28 August 1991)

are not species commonly used as coursing dogs are prescribed for the purposes of section 21 (2C) of the Act.”

## Live baiting of greyhounds in NSW – not a recent phenomenon

3.75 Over many years, live baiting of greyhounds, using rabbits and other animals, has been periodically reported, including in New South Wales, and has also been the subject of occasional prosecutions.

### Instances of reports of live bating and related animal cruelty: 1923 onwards

3.76 Thus, for example, in August 1923, the RSPCA prosecuted two persons at Wallsend Police Court for ill-treating rabbits that were released at the Wallsend Coursing Club. Each rabbit had badly puffed eyes with associated discharges. The Magistrate reportedly dismissed the case stating that he did not have sufficient proof that the rabbits were ill-treated and that they were to be killed in any event.<sup>97</sup>

3.77 In October 1925, two promoters of rabbit coursing at Epsom were convicted and fined 10 pounds each. Evidence had reportedly been given that 31 rabbits were used, they had no reasonable chance of escaping and none survived.<sup>98</sup>

3.78 In October 1939, a Northmead man was convicted and sentenced to one month’s hard labour for having cruelly treated a hare by tying its legs to a “dog racing machine” – being a mechanical lure conveyance – that was chased by greyhounds that killed the hare. When asked by the RSPCA inspector whether it was his usual practice to use live animals, the accused had said “We do it when people want a live animal.”<sup>99</sup>

3.79 In November 1945, two greyhound owners in Geelong were fined 2 pounds each for having dangled a live rabbit from a rope as bait for greyhounds.<sup>100</sup>

3.80 In April 1949, an RSPCA officer reported that cats and small dogs were being used as greyhound bait in Bankstown and Eastwood. In addition, a Stockton ranger reported that possums and cats were being used to blood greyhounds in the Newcastle district.<sup>101</sup> Another newspaper reported that the dogs tore the animals to pieces and that “trainers hoped the live ‘bait’ would improve their racing form”.<sup>102</sup>

3.81 In January 1953, an RSPCA officer reported that cats had been used as live bait at an improvised race track at Lane Cove, and that traffic in cats had increased in alarming proportions.<sup>103</sup>

3.82 In June 1954, reports were received of pet cats being stolen and mutilated in the Westmead area of Sydney in order to train greyhounds.<sup>104</sup>

3.83 In December 1954, the Chief Secretary of the Legislative Assembly advised that police were investigating charges against persons for using live rabbits to train greyhounds.<sup>105</sup>

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<sup>97</sup> Article “Coursing Rabbits”, *The Gundagai Times and Tumut, Adelong and Murrumbidgee District Advertiser*, 10 August 1923.

<sup>98</sup> Article “Cruelty to Rabbits: coursing men fined”, *The Newcastle Sun*, 13 October 1925.

<sup>99</sup> Article “Hare ‘tied to meet its Death,’” *Cumberland Argus and Fruit-growers Advocate*, 4 October 1939.

<sup>100</sup> Article “Tin Hare urged as way to end Cruelty in Coursing”, *Army News*, 28 November 1945.

<sup>101</sup> Article “Possum and Cats Used as Dog Bait”, *The West Wyalong Advocate*, 5 May 1949.

<sup>102</sup> Article “Possums tossed to Dogs”, *The Mail*, 23 April 1949.

<sup>103</sup> Article “Cruel Injuries to Cat”, *Daily Examiner*, 5 January 1953.

<sup>104</sup> Article “Cats Mutilated as Bait for Greyhounds in Sydney”, *The Dubbo Liberal and Macquarie Advocate*, 2 June 1954.

<sup>105</sup> Article “Police move on Rabbits”, *The Sydney Morning Herald*, 1 December 1954.

- 3.84 In August 1966, the then Chief Secretary condemned the conduct of persons said to be involved in using live rabbits to train greyhounds near Liverpool. A Sydney newspaper showed dogs ‘tearing rabbits to pieces’ and reported that the rabbits were being tied to a mechanical hare device on a small track and that greyhounds were allowed to savage the animals when they caught them. The practice was said to go on every weekend and owners were reportedly charged \$3 for each kill.<sup>106</sup>
- 3.85 In August 1968, the RSPCA inspected a training track where live rabbits were reportedly used to blood greyhounds. The secretary of the RSPCA reported having received a death threat to deter further investigation into the training track.<sup>107</sup>
- 3.86 In February 1988, the RSPCA inspected a greyhound track at Hexham, Newcastle and reportedly found a live rabbit tied to a lure, a further rabbit already mauled, and 10 other live rabbits waiting to be used.<sup>108</sup>

### ***Meader v Eckersley (1991)***

- 3.87 In December 1991, the NSW Court of Criminal Appeal delivered judgment in *Meader v Eckersley*.<sup>109</sup> The Court considered a Case Stated following the conviction of two appellants for various offences under the *Prevention of Cruelty to Animals Act 1979* in respect of the use of live rabbits as lures in the training of greyhounds. Each accused had been convicted and sentenced to terms of imprisonment for four months.
- 3.88 The evidence before the Magistrate was to the effect that RSPCA officers entered the premises while training was in progress and found some caged live rabbits as well as a substantial number of mutilated rabbit carcasses. The accused contended that the prosecution had not established that a live rabbit had been used as a lure; they asserted that any live rabbit was painlessly killed, by having its neck wrung, before the carcass was attached to the mechanism.
- 3.89 Before the Magistrate, the prosecutor had relied on evidence from a veterinary surgeon who took the carcasses away and conducted post mortems. They revealed haemorrhages of such a nature as to indicate, in his opinion, that in each case the heart of the rabbit has still been beating when a carnivore, such as a greyhound, had killed it. The Magistrate refused the accused’s application to have the evidence of the veterinary surgeon excluded.
- 3.90 On appeal, the District Court judge (Kirkham DCJ) held that the RSPCA officers were entitled to seize the carcasses under the combined effect of ss. 25 and 26 of the Act.
- 3.91 The NSW Court of Criminal Appeal (Hunt CJ at CL, Allen and Badgery-Parker JJ) held, however, that Kirham DCJ had erred and the word “animal” in the provisions relied upon to seize the carcasses meant a live animal and not a dead carcass. However, an officer in the exercise of his or her authority and power as a special constable could lawfully seize a carcass, like any other animal, under common law powers. The seizure was thus lawful, and the conviction stood.

### ***Houghton v Nugent (1991)***

- 3.92 In the 1991 Western Australian case of *Houghton v Nugent*,<sup>110</sup> the appellant unsuccessfully appealed against a decision of a Magistrate convicting him of having in his control a rabbit for the purpose of using the animal in connection with the training of greyhounds. The central

<sup>106</sup> Article “Dog-Bait Rabbits – ‘Barbaric Custom’”, *The Canberra Times*, 16 August 1966.

<sup>107</sup> Article “Threats to lives of RSPCA Officials”, *The Canberra Times*, 28 August 1968.

<sup>108</sup> Article “Calls for inquiry into ‘Blooding’”, *The Canberra Times*, 11 February 1988.

<sup>109</sup> *Meader v Eckersley* (Unreported, NSWCCA, Hunt CJ at CL, Allen and Badgery-Parker JJ, 19 December 1991).

<sup>110</sup> *Houghton v Nugent* (Unreported, Supreme Court of Western Australia, Franklyn J, 28 August 1991)

question before the Magistrate was whether the rabbit was alive or dead when placed on the lure. Witnesses gave evidence that the rabbit was seen live and squealing on the lure. The defence case was that, at the track, the appellant had been given a live rabbit by his wife but had wrung its neck before fixing it to the lure. The appellant said he felt and heard its neck break and that he was experienced in this method of killing rabbits.

- 3.93 Justice Franklyn held that in s 4(1)(mb) of the *Prevention of Cruelty to Animals Act (WA)* – making it an offence for a person to keep or have possession of any animal, not being a greyhound, for the purpose of using it in connection with the racing or training of greyhounds – the reference to any “animal” necessarily meant a live animal, not a dead carcass.
- 3.94 Justice Franklyn said the Magistrate was satisfied beyond reasonable doubt that the rabbit was alive when affixed to the lure and that the appellant knew it was. The critical element of the charge was made out. The appeal was dismissed.

### **Casino track: 1992**

- 3.95 In July 1992, RSPCA and NSW police officers inspected a greyhound track at Casino and found several mutilated rabbits tied to a lure and three live rabbits in the control tower. The Secretary of the NSW Racing Control Board was quoted as stating: “This board is adamant that it intends to stamp out the abhorrent practice of live baiting and the full force of the board’s rules will be brought down on any person engaged in that activity.”<sup>111</sup>

## **The Commission’s investigations into live baiting**

### **The nature of the Commission’s investigations**

- 3.96 As noted, the Commission conducted extensive investigation into the practice of live baiting in the greyhound industry in NSW. It did this by a variety of investigative techniques that included private hearings and, in some cases, adducing evidence at public hearings.
- 3.97 To an extent, the public hearings provided useful case studies of examples of live baiting in NSW.
- 3.98 A number of the industry participants from NSW, that could be identified from the *Four Corners* program as having participated in live baiting, are, or were, the subject of prosecutions under the *Prevention of Cruelty to Animals Act 1979*. The Commission did not seek to investigate those persons who were the subject of existing prosecutions.
- 3.99 Through its investigations, the Commission did, however, identify a significant number of persons who were identified as having engaged in the practice of live baiting. They were not persons shown in the *Four Corners* program that was broadcast. Many, but not all, of the industry participants that the Commission examined admitted to having engaged in the practice of live baiting of greyhounds and of having done so for many years. Some of the witnesses also identified other persons they described as having engaged in the practice.

### **The extent of the practice of live baiting in NSW**

- 3.100 The Commission examined the extent to which the practice of live baiting was prevalent in NSW, at least as at the time of the *Four Corners* program on 16 February 2015. The latter date is significant in that it appears the public outcry that the program occasioned, and the consequent

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<sup>111</sup> Article entitled “Arrests for Live Rabbit”, *The Canberra Times*, 3 July 1992.

focus of attention upon the practice, has had the effect of ending the prevalence of live baiting, at least on a temporary basis.<sup>112</sup>

- 3.101 The Commission heard a significant body of evidence that, until the broadcast of the *Four Corners* program, the practice of using live animals to train greyhounds in NSW was widespread. Witnesses considered it to be a traditional method of training greyhounds. As will be noted below, witnesses told the Commission that the practice of live baiting was “common practice”, “rampant” and “extremely widespread” within the industry. Witnesses variously told the Commission that about “85 to 90%”, or “90%”, of industry participants used live rabbits to train greyhounds. One witness said he could not think of any trainers not using live baiting as a method of training. Another witness said that, for most trainers, live baiting was “just the way to do it.” One witness indicated that, by practising live baiting, they were just doing what other people in the industry were doing.
- 3.102 Whether or not live baiting was engaged in to the extent that these witnesses claimed is debatable. Their views were based on gossip and talking with other trainers and participants in the industry and cannot be considered as a reliable estimate of the extent of live baiting in New South Wales prior to February 2015. Mr Bruce Carr, a licensed trainer who engaged in live baiting and assisted others to do it at training track he owned, said in evidence that he thought only 10 – 20% of trainers engaged in live baiting. His involvement in, and actual knowledge of, live baiting was greater than any other person who gave evidence about the subject. The Commission thinks that his evidence is more likely to be correct than the “guesstimates” of other witnesses. Whatever the correct figure may be, the Commission heard enough evidence to indicate that in recent years a significant number of trainers – probably about 10 - 20% of trainers - were engaged in the practice as part of the training of greyhounds as at February 2015.

### **At what type of locations did live baiting take place?**

- 3.103 The Commission heard evidence that the practice of live baiting took place at various types of locations. Thus, live baiting was periodically practised on a number of private properties, including those that contained a ‘bull-ring’. A bull-ring (sometimes known as a ‘circle’) is a small track, typically enclosed, which contains rails with an arm that is attached to the rail and can be spun around the rails. A lure, such as a live rabbit, can be strapped to the arm. The greyhound is released from a starting box, to chase the rabbit attached to the arm, which has been propelled around the track. The greyhound may be muzzled so that, at least initially, the rabbit – although clearly petrified – is not killed when caught by the greyhound. The same dog may be given a number of turns chasing the rabbit. At some point, however, the muzzle is removed and the greyhound chases the rabbit and, upon catching the lure, then savages and kills the rabbit. The killing of the live animal in such fashion is known as ‘blooding’ the greyhound.<sup>113</sup>
- 3.104 The owner of the property containing the bull-ring typically charges a fee – something in the order of \$20 per rabbit/blooding – for participants to use the bull-ring for their greyhounds. The owner of the bull-ring is also often involved in supplying the live rabbits, affixing them to the lure and in propelling the mechanical arm containing the lure.
- 3.105 In addition to there being one or more starting boxes for the dogs, there will typically also be viewing kennels in which are placed dogs who are waiting for their turn to chase the lure. It is

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<sup>112</sup> Note that as at March 2016, GRNSW was investigating allegations of participants having engaged in live baiting at a NSW greyhound racetrack in October 2015: GRNSW Response to Order 28 dated 22 March 2016, [3].

<sup>113</sup> See for example, Adam Wallace, 28 September 2015: T70-71.

considered that the dogs can be educated, in part, by watching the behaviour of other dogs that are chasing the bait.<sup>114</sup>

- 3.106 Live baiting was, in many instances, adopted as part of the process of “breaking in” young greyhounds. It was utilised by greyhound trainers for ‘problem dogs’ that were perceived to be insufficiently vigorous in chasing a lure or commencing quickly from the starting boxes.
- 3.107 As a typical part of the process of live baiting, the live rabbit is put on the end of a piece of string and dangled in front of a dog positioned in a viewing kennel with the aim of getting the dog excited.<sup>115</sup> The live rabbit is then attached to the lure which is moved around the bull-ring. The greyhound is then released from a starting box and allowed to catch the lure.
- 3.108 A witness told the Commission that he had effectively coused his dogs by throwing a live rabbit into an enclosed grass area to enable a litter of puppies to learn to chase. The same witness had also engaged in live baiting after-hours at Richmond greyhound track (discussed below).

### Suppliers of live rabbits

- 3.109 The Commission heard evidence of persons being involved in supplying live rabbits for use by greyhound industry participants. In some cases, this was done while public trials were being conducted at Appin, a registered greyhound racing track, with an enterprising vendor seeking custom from trainers attending the trials. That such conduct could occur at a public training track indicates that even those who did not participate in live baiting must have known it was going on and took no action to stop it. Witnesses also gave evidence of persons coming to the properties of greyhound trainers and selling them live rabbits, usually at about \$10 per rabbit. They were, in effect, door-to-door salesmen of live rabbits for trainers. This appeared to have been a not uncommon occurrence.
- 3.110 One witness (Ms Sherrie Turner) identified as being a supplier of live rabbits provided them to other greyhound trainers using the code language of “parcels”. Customers had to pick up their parcels very soon after being notified they had arrived, because the supplier (who was also a greyhound trainer) did not want the live rabbits on her property any longer than necessary.

### Does live baiting enhance greyhound performance?

- 3.111 Does live baiting enhance the performance of a greyhound? In evidence before the Commission, industry participants expressed differing views about this question. However, a significant number of participants, who had engaged in the practice, believed that live baiting did enhance performance. They believed that it made the greyhound run faster or be a better chaser – ie, a dog more inclined to chase the lure. This latter aspect is significant in that no matter how fast a greyhound might potentially be able to run, it will not be a successful racing dog if it is not keen to chase the lure.
- 3.112 The Commission notes that the Working Dog Alliance report (2015) commissioned by GRNSW takes the view that there is no evidence to support the belief that it is necessary to use either a live animal or an animal-derived product to teach a greyhound to chase a lure.<sup>116</sup>
- 3.113 The Commission received expert evidence on the question from Dr Karen Dawson, a qualified veterinarian with particular expertise in greyhound behaviour. Dr Dawson’s view is that live

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<sup>114</sup> Wayne Smith, 28 September 2015: T103-104.

<sup>115</sup> See for example, Adam Wallace, 28 September 2015: 70, 81.

<sup>116</sup> Ex S (17 November – 19 November 2015), pp. 5, 48.

baiting can be performance enhancing. Dr Dawson qualified her view by indicating that, for a proportion of dogs, live baiting may, however, not have such an effect.<sup>117</sup>

- 3.114 Having regard to the totality of the evidence it received, including the expert evidence of Dr Dawson, the Commission is of the view that live baiting of greyhounds can enhance performance for at least some greyhounds. While this perception exists – and it appears to be deeply rooted in the thinking of many participants in the industry – the temptation to engage in live baiting will remain ever present. Furthermore, the reaction of a vocal minority at public meetings of greyhound trainers that were held in the weeks after the *Four Corners* program provides no ground for thinking that live baiting is no longer an issue.
- 3.115 As discussed later in this Report, Paul Newson gave evidence that, after the *Four Corners* broadcast, he had attended public meetings of greyhound trainers at a number of towns in New South Wales, as interim CEO, to discuss issues concerning the industry. He found it “a confronting experience” He said that there was a vocal minority who were critical of the *Four Corners* program and were hostile to moves to end live baiting.<sup>118</sup>

### **Live baiting can adversely affect a greyhound’s future well-being**

- 3.116 Live baiting is typically viewed as raising animal cruelty and welfare issues in respect of the animal that is being used as the bait, such as the terrified rabbit. However, what is less appreciated is the adverse effect that live baiting can have on a greyhound’s future well-being. In this respect, Dr Dawson gave evidence, which the Commission accepts, that live baiting of a greyhound can have an adverse effect on the dog throughout its whole life. For a significant number of greyhounds, the exposure to live baiting can permanently alter them by introducing increased predatory aggression.<sup>119</sup> This adds significantly to the difficulties in being able successfully to re-home the greyhound after the end of its racing career. The increased predatory aggression, caused by involvement in live baiting, means the dogs presents a greater risk of acting violently towards other household pets or, indeed, young children.
- 3.117 Some risk-posing dogs may be weeded out by appropriate temperament tests and, if they cannot be managed, may be euthanased. However, temperament tests may not always be appropriately applied or may not detect every risk-posing dog. Such dogs may be placed with families who are not aware of the significant danger that the dog presents because of its previous exposure to live baiting.
- 3.118 Live baiting thus has significant adverse effects that extend beyond the profound cruelty inflicted upon the animal being used as the bait. It also puts persons involved in re-homing or adopting greyhounds in a difficult position in having to take on dogs that have an increased level of predatory aggression.<sup>120</sup>

### **Industry-participant witnesses and live baiting**

- 3.119 As noted, the Commission received evidence, in public hearings, from industry participants who were identified as being involved in live baiting. Each participant gave evidence under compulsion of a summons.

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<sup>117</sup> Dr Karen Dawson, 18 November 2015: T577.15-25.

<sup>118</sup> Dr Karen Dawson, 18 November 2015: T576.35-577.9.

<sup>119</sup> Paul Newson, 2 October 2015: T404.12.

<sup>120</sup> Dr Karen Dawson, 18 November 2015: T578-579.

### **Mr Wayne Smith**

- 3.120 Mr Wayne Smith had been a greyhound trainer for about 30 years. He lives in Western Sydney and trained his dogs at the Richmond race track.
- 3.121 Mr Smith told the Commission that, to his understanding, it was common practice in the greyhound racing industry to use live baits for the purpose of training greyhounds, at least until the broadcast of the *Four Corners* program in February 2015.<sup>121</sup> Mr Smith believed that about 85 to 90% of the participants in the industry used live rabbits for the purpose of training greyhounds.<sup>122</sup>
- 3.122 Mr Smith regarded live baiting as a traditional training technique for greyhounds.<sup>123</sup>
- 3.123 Mr Smith gave evidence that he had used live rabbits to train his greyhounds. He said he did this over about four to six years, ending in December 2014. He used live rabbits when he had a “problem dog” that he wanted to be a faster chaser (of the lure) than it presently was. Mr Smith said that using live rabbits made the dogs “chase better”.<sup>124</sup> The use of a live rabbit would get the dog excited, causing it to chase faster.<sup>125</sup>
- 3.124 The live baiting took place at a bull-ring operated by Mr X<sup>126</sup> in Western Sydney.<sup>127</sup> Mr X supplied the live rabbits on those occasions. Mr Smith paid \$20 for each live rabbit used.<sup>128</sup>
- 3.125 Mr Smith also engaged in live baiting at Richmond greyhound race track.<sup>129</sup> He did this at night-time in the area where the races are conducted. He said Mr Adam Wallace accompanied him.<sup>130</sup> The gates to the track were not locked. According to Mr Smith, he did it on only one occasion, a couple of years ago.<sup>131</sup> He brought a live rabbit with him. He had purchased the rabbit from a man he knew could supply live rabbits, and whom he occasionally saw at the pub.<sup>132</sup>
- 3.126 Mr Smith also brought to the race track a home-made detachable arm to which he affixed the live rabbit. He attached the arm, which was spring-loaded, to the rail on the race track. The arm was then pulled along for the greyhound to chase. At first the dog had a muzzle. The muzzle was later removed and on this occasion the dog savaged, and killed, the rabbit. Mr Smith then picked up the dead rabbit and threw it in the bushes.<sup>133</sup>
- 3.127 Mr Smith told the Commission that, on another occasion, he purchased rabbits from the same supplier. Mr Smith said this was about two to three years ago.<sup>134</sup> He had a new litter of six or seven greyhound puppies. They were about 3 months old. The puppies were in an enclosed grassed area outside his residence. He threw the live rabbit in the enclosed area. The pups chased and killed the rabbit. Mr Smith said he did this to ‘blood’ the pups early, to try to make sure they were good chasers.<sup>135</sup> He said: “It’s a lot like coursing them.”<sup>136</sup>

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<sup>121</sup> Wayne Smith, 28 September 2015: T115.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid, T117.

<sup>124</sup> Ibid, T101.

<sup>125</sup> Ibid, T102.

<sup>126</sup> The name and address of the operator of the bull-ring has been anonymised so as not to prejudice extant criminal proceedings.

<sup>127</sup> Wayne Smith, 28 September 2015: T102-103.

<sup>128</sup> Ibid, T105.

<sup>129</sup> Ibid, T103.

<sup>130</sup> Mr Wallace gave evidence corroborating Mr Smith’s account of live baiting at the Richmond race track.

<sup>131</sup> Wayne Smith, 28 September 2015: T106.

<sup>132</sup> Ibid, T107.

<sup>133</sup> Ibid, T109-111.

<sup>134</sup> Ibid, T108.

<sup>135</sup> Ibid, T113-114.

<sup>136</sup> Ibid, T114. 22.

- 3.128 Mr Smith also told the Commission that Mr Todd Fear and Mr Adam Wallace – each of whom were acquaintances of Mr Smith and were also compelled to give evidence before the Commission – engaged in the practice of live baiting.

#### *Inspections*

- 3.129 Mr Smith said that, despite having had industry involvement with greyhounds over about 30 years at two different properties, he could recall only one occasion where GRNSW (or its predecessor body) inspected his property. That was on 9 February 2015.<sup>137</sup>

#### **Mr Adam Wallace**

- 3.130 Mr Adam Wallace was a licensed public trainer of greyhounds. He has been involved in training greyhounds since 1999.
- 3.131 Mr Wallace admitted to the Commission that he had been involved in the practice of live baiting.<sup>138</sup> He said it was common knowledge that a lot of people in the greyhound racing industry participated in live baiting.<sup>139</sup> Mr Wallace's view was that 90% of industry participants were involved in live baiting.<sup>140</sup> He could not think of any trainers that were not using live baiting as a method of training.<sup>141</sup>
- 3.132 Mr Wallace testified that he had participated in live bating of greyhounds at a number of locations.
- 3.133 He identified Mr Bruce Carr – an 'educator' of young greyhounds who operated a breaking-in service for greyhounds in Western Sydney – as operating a bull-ring at which live baiting took place. Mr Wallace attended Bruce Carr's property on numerous occasions and engaged in live baiting. Mr Todd Fear accompanied him on an attendance in late 2014.<sup>142</sup>
- 3.134 Mr Wallace gave evidence that Mr Carr supplied the live rabbits and put them on the lure. Mr Carr also propelled the lure for the greyhound to chase. Mr Wallace paid Mr Carr \$20 per rabbit that was used in the bull-ring.<sup>143</sup> On other occasions, Mr Carr would allow participants to use the bull-ring with live rabbits without him being present.<sup>144</sup>
- 3.135 Mr Wallace described Mr Carr's property as being very popular with other greyhound trainers. It was fairly busy on occasions when he would attend to engage in live baiting. There would be a queue of trainers and other greyhound industry participants waiting to use the bull-ring. Mr Wallace understood that Mr Carr's bull-ring was popular because Mr Carr allowed live rabbits to be used there.<sup>145</sup> Mr Wallace observed other trainers using live baits at Mr Carr's bull-ring in 2014.<sup>146</sup>
- 3.136 Mr Wallace also identified Mr Norm Becroft and his wife Tracey Becroft as having been at Mr Carr's property at the bull-ring on occasions when Mr Wallace attended to engage in live baiting.<sup>147</sup> Mr Becroft was a successful trainer who later became a steward with GRNSW. Mrs Becroft was also a successful trainer.

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<sup>137</sup> Wayne Smith, 28 September 2015: T98-99.

<sup>138</sup> Adam Wallace, 28 September 2015: T67.

<sup>139</sup> Ibid, T67, 84.

<sup>140</sup> Ibid, T85.

<sup>141</sup> Ibid, T85.

<sup>142</sup> Mr Fear gave evidence corroborating Mr Wallace's account of live baiting at Mr Carr's property.

<sup>143</sup> Adam Wallace, 28 September 2015: T69, 71.

<sup>144</sup> Ibid, T68.

<sup>145</sup> Ibid, T72.

<sup>146</sup> Ibid, T84.

<sup>147</sup> Ibid, T73-74.

- 3.137 Mr Wallace also gave evidence of attending the property of Harry Sarkis on two occasions in 2014 to engage in live baiting. Mr Sarkis is a successful trainer based in Western Sydney. He has a bull-ring on his property.
- 3.138 Mr Fear accompanied Mr Wallace on the first occasion he attended Mr Sarkis' property. They brought their own live rabbit.
- 3.139 At Mr Sarkis' property, Mr Wallace says he observed Mr Sarkis put a live rabbit on the lure in the bull-ring.<sup>148</sup>
- 3.140 Mr Wallace told the Commission that he also attended the property of Mr X in late 2014 in the company of Mr Smith and Mr Fear, and engaged in live baiting of greyhounds at Mr X's bull-ring using live rabbits.<sup>149</sup>
- 3.141 Mr Wallace also gave evidence of attending with Mr Smith to engage in live baiting at Richmond race track.<sup>150</sup> Mr Wallace gave an account consistent with that provided in evidence by Mr Smith which is described at [3.125] and [3.126] above.

#### **Mr Todd Fear**

- 3.142 Mr Todd Fear is a greyhound trainer. He gave evidence to the Commission in which he admitted having engaged in the practice of live baiting.
- 3.143 Mr Fear described the practice of live baiting as being rampant in the industry.<sup>151</sup> His view was that about 90 per cent of greyhound trainers engaged in live baiting<sup>152</sup> before the broadcast of the *Four Corners* program.
- 3.144 Mr Fear referred to the mindset of greyhound trainers. He said that, for most trainers, live baiting was "just the way you did it."<sup>153</sup>
- 3.145 He used live rabbits to make his dogs chase faster.<sup>154</sup>
- 3.146 Mr Fear gave evidence of his view that GRNSW did not police the use of live rabbits for training and that, if it had done so, the practice would not have happened<sup>155</sup> (or, presumably, may not have happened to such an extent).
- 3.147 Mr Fear said that he had engaged in live baiting, and observed it taking place, at the properties and bull-rings operated by Mr Bruce Carr, Mr X and Mr Harry Sarkis, respectively.<sup>156</sup>
- 3.148 Mr Fear said he attended Mr X's property on three occasions, during two of which live rabbits were used to train greyhounds. Mr Fear paid Mr X \$20 for each rabbit. In December 2014, Mr Wallace attended with him at Mr X's property. As part of the training process, a live rabbit was dangled in front of dogs in the viewing kennels.<sup>157</sup>
- 3.149 Mr Fear also gave evidence of having attended the property of Mr Carr on about 20 occasions to use his bull-ring. On some occasions Mr Wallace accompanied him. Each time, Mr Carr was

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<sup>148</sup> Adam Wallace, 28 September 2015: T83.

<sup>149</sup> Ibid, T64-65, 77, 79.

<sup>150</sup> Ibid, T77-78.

<sup>151</sup> Todd Fear, 29 September 2015: T141.

<sup>152</sup> Ibid, T141.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid, T135.

<sup>155</sup> Ibid, T142.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid, T134.

present. On some occasions, Mr Carr put live rabbits on the lure. Mr Carr supplied the live rabbits. On some occasions, dead rabbits were used.<sup>158</sup>

3.150 Mr Fear observed other industry participants waiting in front of him to use the bull-ring at Mr Carr's property. Mr Fear witnessed other trainers engaging in live baiting at the property.<sup>159</sup>

3.151 Mr Fear gave evidence of having attended Mr Sarkis' property twice in 2014, a few weeks apart. Adam Wallace accompanied him. Mr Sarkis was present. Mr Fear and Mr Wallace used the bull-ring at Mr Sarkis' property to engage in live baiting. Mr Fear told the Commission that, on the first occasion, Mr Sarkis operated the bull-ring. Mr Fear and Mr Wallace supplied their own live rabbits.<sup>160</sup>

#### **Witness Z**

3.152 Witness Z is a greyhound trainer.<sup>161</sup> Witness Z admitted to the Commission having used live rabbits to train greyhounds. Witness Z had done so for about three years. Witness Z used live rabbits for this purposes every three or four weeks.<sup>162</sup> Witness Z coursed young greyhounds in a contained area by releasing a live rabbit and letting the greyhound chase and kill it.<sup>163</sup> Once the rabbit had been killed, witness Z would use the carcass to "stir up" the other greyhounds in the kennels.<sup>164</sup>

3.153 Witness Z decided to use live rabbits for training greyhounds "Because everyone was. That's how they broke dogs in."<sup>165</sup> Witness Z thought it would help the greyhound "to chase" in races which was an important attribute for a greyhound.<sup>166</sup> Witness Z further said: "In greyhound racing, if they don't chase, they can't race."<sup>167</sup>

3.154 Witness Z also believed that live baiting was widespread in the greyhound racing industry.<sup>168</sup> Witness Z said that this was just doing what other people in the industry were doing.<sup>169</sup>

3.155 After initially telling the Commission that the live rabbits were obtained from an unspecified "bloke from the country", Witness Z ultimately identified the supplier of the rabbits.<sup>170</sup> The supplier is also a greyhound trainer. Witness Z paid the supplier \$10 for each live rabbit.<sup>171</sup> Witness Z would drive to the supplier's property with a cage and obtain a quantity of live rabbits.<sup>172</sup> Witness Z would keep the rabbits in a cage before later releasing individual rabbits to be coursed by a greyhound.<sup>173</sup> Witness Z said that the supplier first provided live rabbits to Witness Z in about September 2013.<sup>174</sup>

3.156 Witness Z also gave evidence of having attended the property of Mr Bruce Carr, on two occasions in 2014, to use his bull-ring. Each time, Witness Z brought two greyhounds to use Mr

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<sup>158</sup> Todd Fear, 29 September 2015: T136-137.

<sup>159</sup> Ibid, T137, 141.

<sup>160</sup> Ibid, T138-141.

<sup>161</sup> Witness Z was examined at a private hearing before the Commission. Subsequently, the Commission made a non-publication order with respect to the identity of Witness Z. A redacted transcript of Witness Z's evidence is Exhibit RRR.

<sup>162</sup> Witness Z, 10 September 2015: T11.43.

<sup>163</sup> Ibid, T11.45-T12.13.

<sup>164</sup> Ibid, T13.11.

<sup>165</sup> Ibid, T25.30.

<sup>166</sup> Ibid, T27.5-19.

<sup>167</sup> Ibid, T27.31.

<sup>168</sup> Ibid, T31.45-46, T42.31-33, T65.20-22.

<sup>169</sup> Ibid, T34.31-32.

<sup>170</sup> Ibid, T19.18-19.

<sup>171</sup> Ibid, T20.21.

<sup>172</sup> Ibid, T20.26-42.

<sup>173</sup> Ibid, T21.36-49.

<sup>174</sup> Ibid, T22.31-33.

Carr's bull-ring. Mr Carr supplied live rabbits for Witness Z to use.<sup>175</sup> Witness Z paid him \$30 for the lure and rabbits for the two dogs. Witness Z observed Mr Carr strap the live rabbit to the arm and push it around. In turn, each dog chased the lure. Each dog had a muzzle on. After chasing the rabbit, the first dog was placed back in the trailer that Witness Z had brought and then Mr Carr took the second dog through the same process, with the same live rabbit on the lure.

- 3.157 Witness Z told the Commission that, when at Mr Carr's property engaging in live baiting, there were a number of parked cars, with dog trailers and people waiting to utilise Mr Carr's services.<sup>176</sup>

### ***Ms Majella Ferguson***

- 3.158 Ms Majella Ferguson said that she had a long involvement in the greyhound industry and been a public trainer of greyhounds for a number of years.
- 3.159 Ms Ferguson gave evidence to the Commission in which she admitted engaging in live baiting. When asked why she did this, Ms Ferguson said of greyhounds: "They're coursing animals".<sup>177</sup> She believed it would make them better chase the lure if they were trained using a live animal. She believed this was a very commonly held view within the industry.<sup>178</sup>
- 3.160 Ms Ferguson said that the practice of live baiting was "extremely widespread" within the industry.<sup>179</sup>
- 3.161 Ms Ferguson gave evidence that she saw Mr X use live rabbits at his property in December 2014.
- 3.162 She also gave evidence of having attended Mr Bruce Carr's property within the previous 12 months, and having seen trainers there using live rabbits.<sup>180</sup>
- 3.163 On one occasion when she attended the property of Mr Sarkis to slip her dogs, she says she saw Mr Sarkis and some other people engaging in live baiting at the bull-ring.<sup>181</sup>

### ***Ms Sherrie Turner***

- 3.164 Ms Sherrie Turner was summonsed to give evidence. She has been an owner-trainer of greyhounds for many years with about 18 years' experience in the industry.
- 3.165 In evidence to the Commission, Ms Turner admitted to being a supplier of live rabbits (and dead rabbits) to a number of other greyhound trainers.<sup>182</sup> She charged \$10 per rabbit. Her evidence was that she provided a number of rabbits each time to her customers.
- 3.166 Ms Turner said she got her supply of rabbits from a man (Greg) from Goulburn to whom someone had passed on her phone number. Ms Turner said she had the man's number programmed into her phone but deleted the number after February 2015.<sup>183</sup> She said that they would ring each other and she would place orders for rabbits. The man would deliver live rabbits every three to four months, which she would then keep in cages in a shed at her property. Ms Turner said that, when Greg made deliveries to her, he appeared to have other rabbits besides

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<sup>175</sup> Witness Z, 10 September 2015: T55.46-47.

<sup>176</sup> Witness Z, 10 September 2015: T59.21-T60.5.

<sup>177</sup> Majella Ferguson, 28 September 2015: T192.9.

<sup>178</sup> Ibid, T192.18-20.

<sup>179</sup> Ibid, T192.27-28.

<sup>180</sup> Ibid, T189.15.

<sup>181</sup> Majella Ferguson, 28 September 2015: T190.20-37.

<sup>182</sup> Sherrie Turner, 29 September 2015: T151.3-5.

<sup>183</sup> Ibid, T163.23.

the ones he delivered to her.<sup>184</sup> Ms Turner also referred to her supplier as “the Bunny Boy”.<sup>185</sup> When communicating with him, they would each refer to live rabbits by using the code word ‘parcels’ – so that, for example, when placing an order for 50 live rabbits, Ms Turner would say “I need 50 parcels”.<sup>186</sup>

- 3.167 After she received each delivery, Ms Turner would phone her customers and tell them “You must get here straight away and pick your supply up.”<sup>187</sup> Some customers would be asked to collect the live rabbits within about an hour. Ms Turner gave evidence that she wanted the live rabbits off her property as soon as possible.<sup>188</sup> When communicating with customers Ms Turner would also use the code word of ‘parcels’, and would say “Your parcels have arrived.”<sup>189</sup>
- 3.168 Ms Turner gave evidence to the effect that she understood that some of her customers would be using the rabbits, which Ms Turner supplied, for the purpose of training their greyhounds with live animals.
- 3.169 Ms Turner gave evidence to the effect as to her understanding that it was common knowledge that people in the greyhound industry were involved in live baiting. Part of Ms Turner’s understanding arose from the fact that greyhound trainers were obtaining live rabbits from her.<sup>190</sup>

#### *Inspections*

- 3.170 Ms Turner told the Commission that from 1998 until July 2015 GRNSW (and its predecessor) had conducted only one inspection of her property. That was in 2014.<sup>191</sup>

#### **Mr Harry Sarkis**

- 3.171 Mr Harry Sarkis told the Commission he had been a licensed public trainer of greyhounds since 1977.
- 3.172 In evidence, Mr Sarkis was questioned about live rabbits he acquired at Appin greyhound race track. He admitted collecting a crate containing live rabbits from Appin race track on 31 August 2010 when he was trialling his dogs. He said that he did not know the name of the man who supplied him with the live rabbits. He said that “[h]e was just there selling rabbits.”<sup>192</sup> Mr Sarkis said that, when GRNSW and the RSPCA turned up at this property shortly after he acquired the rabbits, they were in a cage near his bull-ring. Mr Sarkis told the GRNSW and RSPCA officers that the rabbits were for eating.<sup>193</sup> The officials confiscated the rabbits, but not the rabbit cage.<sup>194</sup>
- 3.173 Mr Sarkis was questioned about a further occasion, in June 2014, when a GRNSW officer attended his property and found a rabbit in a cage. The rabbit was confiscated. Mr Sarkis told the Commission, and the GRNSW officer in June 2014, that the rabbit was for his grandchildren to look at when they visited him. Mr Sarkis said the GRNSW officer did not confiscate the rabbit and he, Mr Sarkis, later ate it.<sup>195</sup>

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<sup>184</sup> Sherrie Turner, 29 September 2015: T165.36-38.

<sup>185</sup> Ibid, T177.19.

<sup>186</sup> Ibid, T178.10-17.

<sup>187</sup> Ibid, T166.41-42.

<sup>188</sup> Ibid, T168.21-30.

<sup>189</sup> Ibid, T178.21.

<sup>190</sup> Ibid, T176.1-31.

<sup>191</sup> Ibid, T177.8-9.

<sup>192</sup> Harry Sarkis, 30 September 2015: T200.32.

<sup>193</sup> Ibid, T201.1-4.

<sup>194</sup> Ibid, T202.7.

<sup>195</sup> Ibid, T203.37.

- 3.174 Mr Sarkis gave evidence of buying live rabbits from people at race tracks. He said it was a common practice for people to turn up outside the greyhound race tracks offering to sell live rabbits.<sup>196</sup>
- 3.175 Mr Sarkis was questioned about a handwritten message on a cupboard door at his property (a photograph of which was in the possession of the Commission) that said “Jeff The Rabbit Man” followed by a telephone number. Mr Sarkis told the Commission that the rabbit supplier at Appin race track had given him the number so Mr Sarkis wrote it on his cupboard door. He said, however, that he had never phoned ‘Jeff the Rabbit Man’.<sup>197</sup>
- 3.176 Under questioning by Counsel Assisting, Mr Sarkis admitted that he kept rabbits on his property in a big cage from time to time. He said the rabbits were for eating.<sup>198</sup> He denied having the rabbits for the purpose of live baiting.<sup>199</sup>
- 3.177 Mr Sarkis denied knowing Adam Wallace and Todd Fear.<sup>200</sup> He also denied having engaged in live baiting on his property. When it was put to him that a number of persons had said they engaged in live baiting at his property in a manner that also incriminated themselves, Mr Sarkis suggested that they might have come on to his property without his knowledge.<sup>201</sup>
- 3.178 Mr Sarkis claimed that, if Mr Wallace and Mr Fear (whom he denied knowing) had brought a live rabbit to his property “I would have thrown them straight out the door.”<sup>202</sup> The Commission does not accept Mr Sarkis’ evidence that he bought rabbits only to eat. The Commission has no doubt that he engaged in the practice of live baiting. Ms Ferguson, Mr Wallace and Mr Fear all gave evidence to that effect. They had no reason to falsely implicate Mr Sarkis in live baiting. The Commission was impressed with their demeanour when giving evidence concerning Mr Sarkis and accepts their evidence on this matter.

### ***Mrs Tracey Becroft***

- 3.179 Mrs Tracey Becroft told the Commission she held a public trainer’s licence. She said her husband, Norm Becroft, had been a successful trainer before taking up employment as a steward with GRNSW in 2014. She had helped train his dogs when he was a trainer.<sup>203</sup>
- 3.180 Mrs Becroft gave evidence that the practice of using live rabbits to train greyhounds was widespread. Her evidence was that it was regarded as a traditional and accepted way of training dogs. She said it was a method of training that, to her understanding, had been used for decades if not hundreds of years.<sup>204</sup>
- 3.181 Mrs Becroft admitted having engaged in the practice of live baiting. She gave evidence that she had taken dogs out to Bruce Carr’s property to use his bull-ring. Mr Carr had been present. He supplied rabbits for that purpose. On some occasions, the rabbits were live ones.<sup>205</sup> She paid for the rabbits. She did so periodically over a couple of years. She said she went out there either once a week or once a month.<sup>206</sup> The dogs that chased the rabbits on the lure were muzzled “so that they couldn’t chew.” For dogs that wouldn’t chase, or that wouldn’t come out of the

<sup>196</sup> Harry Sarkis, 30 September 2015: T204.20.

<sup>197</sup> Ibid, T209.22.

<sup>198</sup> Ibid, T210.33.

<sup>199</sup> Ibid, T211.3-5.

<sup>200</sup> Ibid, T200.12.

<sup>201</sup> Ibid, T212.35-36.

<sup>202</sup> Ibid, T214.22-23.

<sup>203</sup> Tracey Becroft, 30 September 2015: T224.40.

<sup>204</sup> Ibid, T242.23.

<sup>205</sup> Ibid, T233.32.

<sup>206</sup> Ibid, T234.33.

starting box properly, the muzzle would be removed so they could have ‘a bit of a chew’ – on occasions on a live rabbit.<sup>207</sup>

- 3.182 When either dead or live rabbits were used at Mr Carr’s property, he would attach the rabbit to the lure and operate the arm of the bull-ring.<sup>208</sup>
- 3.183 Mrs Becroft had also observed, at Mr Carr’s property, live rabbits being dangled in front of a viewing kennel to excite the dog.<sup>209</sup>
- 3.184 Mrs Becroft gave evidence that Mr Carr’s property was a particularly popular venue. Many trainers would turn up from time to time to use the bull-ring, with either a live rabbit or a dead rabbit. There would be trainers in front of her with their dogs waiting to use the bull-ring, and by the time she got to the bullring there would trainers behind her waiting to use it.<sup>210</sup>
- 3.185 Under questioning by Counsel Assisting, Mrs Becroft gave evidence to the Commission that she had it made it clear to her husband, Norm Becroft, that from time to time Mr Carr was using live rabbits on their dogs.<sup>211</sup>

#### **Mr Norm Becroft**

- 3.186 Mr Norman (‘Norm’) Becroft was employed as a steward with GRNSW for about 18 months from March 2014 until he resigned, without giving notice, shortly before giving evidence, under compulsion, before the Commission.<sup>212</sup> He told the Commission his resignation was, at least in part, related to the fact that he recognised he would have to give evidence before the Commission.<sup>213</sup>
- 3.187 Prior to becoming a GRNSW steward, Mr Becroft had been a successful greyhound trainer, from about 2008 to 2014.<sup>214</sup> He is also a former police officer.<sup>215</sup>
- 3.188 Mr Becroft admitted to having engaged in the practice of live baiting prior to his appointment as a GRNSW steward. He told the Commission that he was first exposed to the practice of live baiting as a young boy.<sup>216</sup>
- 3.189 Mr Becroft gave evidence that, when he was a greyhound trainer, he took dogs to Mr X’s property for work on the bull-ring. From time to time, live rabbits were used on the arm.<sup>217</sup> This was over a 6 month period before he had a falling out with Mr X in 2010.<sup>218</sup>
- 3.190 Mr Becroft gave evidence that, after the falling out with Mr X, he attended the property of Bruce Carr on a few occasions to train his greyhounds. He took his dogs there to be fine-tuned on the bull-ring. From time to time, live rabbits would be used.<sup>219</sup> Mr Carr would operate the arm and fix the rabbits to the lure.<sup>220</sup>

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<sup>207</sup> Tracey Becroft, 30 September 2015: T236.16-25.

<sup>208</sup> Ibid, T240.38.

<sup>209</sup> Ibid, T236.33.

<sup>210</sup> Ibid, T235.6-10.

<sup>211</sup> Ibid, T241.19.

<sup>212</sup> Norman Becroft, 30 September 2015: T246.9.

<sup>213</sup> Ibid, T247.26.

<sup>214</sup> Ibid, T246.35-38.

<sup>215</sup> Ibid, T255.31.

<sup>216</sup> Ibid, T253.19-22.

<sup>217</sup> Ibid, T249.40.

<sup>218</sup> Ibid, T251.23.

<sup>219</sup> Ibid, T251.40.

<sup>220</sup> Ibid, T259.16.

- 3.191 Mr Becroft gave evidence that, as a steward at GRNSW, he had a crisis of conscience about knowing what had gone on in the greyhound racing industry – including in respect of live baiting – and not disclosing it to GRNSW.<sup>221</sup>
- 3.192 Mr Becroft also told the Commission that the whole time he worked at GRNSW he was asked to undertake only about one property inspection.<sup>222</sup> He gave evidence to the effect that, for much of the time he worked with GRNSW, he assumed that the stewards were responsible for inspections but that they did not have the manpower to do them.<sup>223</sup> He said the stewards worked “phenomenal hours” doing other duties, involving race officiating, ear-branding and the like.<sup>224</sup>

#### **Mr Bruce Carr**

- 3.193 Mr Bruce Carr told the Commission that he had been a licensed greyhound trainer for about 40 years.
- 3.194 Mr Carr gave evidence that, at his property in Western Sydney, he provides a service of breaking in greyhounds. He is also known as an educator of dogs.<sup>225</sup> He had a bull-ring at his property. As part of his breaking-in service, people place greyhounds with him for between four to eight weeks. The dogs he takes in are between 14 to 18 months old. He uses the bull-ring as part of the breaking-in process.<sup>226</sup> He charges about \$400 per dog for a four week stay.<sup>227</sup>
- 3.195 Mr Carr said that he also permitted people to bring dogs to use his bull-ring, other than the dogs that placed with him. He said sometimes there would be four or five at a time. Saturday and Sunday mornings were popular times.<sup>228</sup> He charged a fee.<sup>229</sup>
- 3.196 There are nine viewing kennels at his bull-ring and a starter box.<sup>230</sup> Mr Carr said that, when people came to use his bull-ring, he would put the dog in the starter box. The owner would push a handle to release the dog from the starter box. Mr Carr would push the arm of the bull-ring.<sup>231</sup>
- 3.197 Mr Carr was questioned about an inspection of his property that GRNSW undertook on 13 February 2015. Four live rabbits and a number of cages were found. A quantity of dead rabbits was also found in two freezers. Mr Carr told the Commission that the four live rabbits were owned by one of his sons, who had them for eating and breeding.<sup>232</sup> He said that he obtained the dead rabbits a week earlier from a man who came to his door offering to sell live rabbits. Mr Carr said he had never seen the man before. He paid him \$10 per rabbit. Mr Carr said that a different person would come every week or so offering live rabbits.<sup>233</sup> His evidence suggests that knowledge of rabbits being used for live baiting was widespread in the industry.

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<sup>221</sup> Norman Becroft, 30 September 2015: T252.40-45.

<sup>222</sup> Ibid, T256.

<sup>223</sup> Norman Becroft, 30 September 2015: T257.32. In fact, GRNSW had a compliance unit, created in about January 2014, during the time Mr Becroft was employed. Persons from the compliance unit were given inspection functions. As Mr O'Mara acknowledged in his evidence, the compliance unit was, however, under-resourced.

<sup>224</sup> Norman Becroft, 30 September 2015: T257.35-39.

<sup>225</sup> Bruce Carr, 30 September 2015: T266.2.

<sup>226</sup> Ibid, T272.24-30.

<sup>227</sup> Ibid, T273.45.

<sup>228</sup> Ibid, T273:12-15.

<sup>229</sup> Ibid, T273.28-36.

<sup>230</sup> Ibid, T274.10.

<sup>231</sup> Ibid, T275.20.

<sup>232</sup> Ibid, T279.15.

<sup>233</sup> Ibid, T277.9-10.

- 3.198 Mr Carr gave evidence that he had not used live rabbits for training greyhounds for two years. This was different from earlier evidence he gave to the Commission in which he denied ever having used live rabbits to train greyhounds.<sup>234</sup>
- 3.199 At the public hearing, Mr Carr admitted he had used live rabbits for training greyhounds, two years ago or more, over about a five year period.<sup>235</sup> He said he would use dead rabbits and live rabbits. He said when live rabbits were used, on most occasions - "nine times out of ten" – the customer would bring the rabbit with them. On other occasions, Mr Carr would provide a live rabbit from his own stock. He would charge \$10 for the rabbit, and a further \$10 to use the bull-ring.<sup>236</sup> He said he acquired rabbits from a person who would come around from time to time and from another source.<sup>237</sup>
- 3.200 Mr Carr gave evidence that, when live rabbits were used, he would put a dog clip around the rabbit's leg and then clip that to the arm of the lure. Mr Carr would make sure he was the person operating the arm of the lure.<sup>238</sup> He said that sometimes the dogs were muzzled, sometimes not.<sup>239</sup> When the dog was muzzled, it would chase and catch up to the rabbit but could not chew it. The owner would then pull the dog away from the rabbit. The same rabbit could then be used for another dog.<sup>240</sup> Mr Carr said that, at the end of the process, he would unclip the rabbit, break its neck, skin and gut it and then throw it to the greyhound pups.<sup>241</sup> If the dog was not muzzled, it would catch the rabbit and the owner would have to try to take the dog off the rabbit.<sup>242</sup> Mr Carr accepted, albeit in a qualified manner, that the process involved was cruel to the rabbit.<sup>243</sup>
- 3.201 Mr Carr told the Commission he did not believe that using live rabbits made a dog perform better.<sup>244</sup>
- 3.202 Mr Carr said that, when he kept dogs at his residence for breaking-in, he did not use live rabbits.<sup>245</sup> He said that only about 10 to 20% of the industry had engaged in live baiting. He disagreed with a suggestion that he had heard that 99% of the industry was involved in live baiting.<sup>246</sup>
- 3.203 Mr Carr said he stopped engaging in live baiting two years ago because he was getting older and did not want to keep looking over his shoulder all the time.<sup>247</sup>
- 3.204 He denied that he had been using live rabbits in the last two years for customers – as stated by customers such as Adam Wallace.<sup>248</sup> On this point, the Commission prefers the evidence of those witnesses who testified that Mr Carr had been involved in live baiting within the previous 12 months.

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<sup>234</sup> Bruce Carr, 30 September 2015: T281.

<sup>235</sup> Ibid, T296.43.

<sup>236</sup> Ibid, T285.16.

<sup>237</sup> Ibid, T282.42-43.

<sup>238</sup> Ibid, T284.12.

<sup>239</sup> Ibid, T285.27.

<sup>240</sup> Ibid, T285.44.

<sup>241</sup> Ibid, T286.9-10.

<sup>242</sup> Ibid, T287.42.

<sup>243</sup> Ibid, T287.6-8.

<sup>244</sup> Ibid, T284.45.

<sup>245</sup> Ibid, T284.19.

<sup>246</sup> Ibid, T284.27-33.

<sup>247</sup> Ibid, T288.12-13.

<sup>248</sup> Ibid, T288.37-39.

## *Inspections*

- 3.205 Mr Carr gave evidence that, in the 30 years that he had resided at his current property and prior to January 2015, GRNSW (or, more precisely, its predecessor) had undertaken only one inspection of his property. That was about 10 years ago.<sup>249</sup>

## **Vocal support for live baiting by industry participants**

- 3.206 A disturbing factor that the Commission encountered in its investigation is the support for live baiting – often euphemistically referred to as “traditional training techniques” – by some industry participants, in quite vocal terms.
- 3.207 Mr O’Mara, the General Manager of Education and Welfare at GRNSW until May 2015, told the Commission that in industry consultation meetings in early 2010, when presenting what became known as “Project Welfare”, a number of industry participants admitted that live baiting was a traditional training method being utilised and showed resistance to change (ie resistance to abandoning the practice).<sup>250</sup>
- 3.208 Mr O’Mara gave evidence to the Commission that a significant percentage of industry participants he encountered at the industry consultation meetings were prepared to assert, in his presence, that they were using live animals for training greyhounds and wanted to be able to continue to do so.<sup>251</sup> Mr O’Mara said that some participants indicated to him that their grandparents had used live animals, and their grandparents before them, that they were going to continue to do so, and that there was no reason to change.<sup>252</sup>
- 3.209 Mr Paul Newson was appointed interim Chief Executive Officer of GRNSW following the removal of the GRNSW Board and the standing down of the previous CEO, Mr Brent Hogan, in late February 2015.<sup>253</sup> Mr Newson gave evidence to the Commission that, after his appointment as interim CEO, he conducted a number of forums with industry participants. Some industry participants made it clear to Mr Newson, in no uncertain terms, that they still supported live baiting. Mr Newson told the Commission:

It was a confronting experience and, to be fair, it was not the majority of participants, but there was certainly a very aggressive, belligerent engagement with me. I had individuals, whether shouting or fairly aggressively confronting me, and making suggestions that if it wasn’t allowed, then x amount of dogs would be euthanised and the sport would end. But just to be clear, that was not the majority view: but there was a number of industry participants that, I guess, were noisier than others and very stridently put those views.<sup>254</sup>

- 3.210 When asked whether the intimidating protestors constituted a significant minority, Mr Newson said:

No. It was significant enough that they were extremely vocal, Commissioner, extremely vocal, and they seemed to dominate discussion. One of my concerns was many of the participants that did not share those views did not have the confidence to speak up in that environment. I certainly had the feeling that there would be intimidation or that they would be fearful speaking up in that environment.<sup>255</sup>

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<sup>249</sup> Bruce Carr, 30 September 2015: T290.25.

<sup>250</sup> Ex WW (17 – 18 February).

<sup>251</sup> Anthony O’Mara, 17 February 2016: T832.19-22.

<sup>252</sup> Ibid, T833. 11-20.

<sup>253</sup> Paul Newson, 2 October 2015: T399.23-24.

<sup>254</sup> Ibid, T404.12-18.

<sup>255</sup> Ibid, T404.21-26.

3.211 Mr Newson gave evidence that the vocal, protesting industry participants had no difficulty in expressing their views (in favour of live baiting) in the presence of other people – ie they had engaged in the conduct and wanted to continue to do so.<sup>256</sup>

3.212 Mr Newson also said he was harangued by industry participants asking why GRNSW had not injunctioned the *Four Corners* program, and telling him that the ABC/*Four Corners* was the real criminals. Mr Newson told the Commission:

What I took from that, and what was alarming, was that there was a rejection of any accountability or obligation to condemn the action with the industry itself. There was a complete deflection, and there was this rejection of the misconduct itself: “The evidence was obtained improperly. They’re the criminals. Why isn’t GRNSW doing its job and taking court action against them?” Again, that was not a majority, by no means. It was a very vocal minority, but at a time when we’ve just been moved across into this industry it was quite confronting to see that there was still a voice like that.<sup>257</sup>

3.213 Mr Newson recalled that at the industry participant meetings at Cessnock and Richmond, in particular, “there was a very vocal presence of those that would suggest the demise of the industry if they weren’t allowed certain practices.”<sup>258</sup>

3.214 In addition, documents the Commission compulsory obtained from GRNSW in March 2016 records an industry participant – the subject of an inspection by GRNSW in August 2015 – as being very vocal in his support of live baiting.<sup>259</sup> Further, as recently as March 2016, GRNSW was investigating allegations that participants had engaged in live baiting at a NSW greyhound racetrack in October 2015.<sup>260</sup>

### **Were the Board and senior management of GRNSW on notice that industry participants were engaging in live baiting?**

3.215 An important issue concerning the management and governance of the industry arises as the extent to which the Board and senior management of GRNSW were on notice that industry participants were engaged in live baiting. In other words, did they know, or should they reasonably have known, that the practice of live baiting – as eventually uncovered by the *Four Corners* program in February 2015 - was being undertaken? If they were on notice, were any adequate steps taken to address the problem?

3.216 The first Chairman of the Board of GRNSW, Professor Percy Allan AM, provided a document to the Commission in May 2015 in which he said that, during his time heading GRNSW (ie 2009 to February 2010), there were not even rumours or allegations of live baiting that came to his attention. In the document, Professor Allan said:

Given our special attention to animal welfare, I was deeply disturbed to learn that live baiting was happening at private training tracks. Immediately after the *Four Corners* program I sent an email to former board members and friends in the sport, which is attached as appendix B. Several responded to my email agreeing with my sentiments.

I hope your Inquiry gets to the bottom of this cruelty, because whenever live baiting was discussed in the sport (in the context of animal welfare agenda items) the answer from participants was always the same; “It used to happen in the old days but is no longer practised.”

Indeed, in my time as Chair there was never a rumour, let alone an allegation, of live baiting that came to my attention. If there had been, the board of GRNSW would have acted swiftly to stamp it

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<sup>256</sup> Paul Newson, 2 October 2015: T404.31.

<sup>257</sup> Ibid, T404.36-44.

<sup>258</sup> Ibid, 405.12-14.

<sup>259</sup> GRNSW Response to Order 28 dated 22 March 2016, APPENDICE IN FOLDER 3

<sup>260</sup> Ibid.

out as I am a longstanding supporter of organisations such as Voiceless, Animals Australia and the RSPCA in ending factory farming, live animal exports and other cruel practices to animals. But I was not alone.<sup>261</sup>

- 3.217 As will be seen, however, the Commission uncovered critical documents, and heard oral evidence, which indicated that the Board and senior management were put on notice that industry participants were, or at all events may have been, engaging in the practice of live baiting as long ago as September 2009. Yet somehow the Board members appear to have misunderstood documents that should have alerted them to the fact that live baiting in the industry was occurring. Further, as the evidence before the Commission revealed, the practice of live baiting was not simply engaged in by a few recalcitrant renegades within the industry. Rather, it was a traditional method of training that was widespread.
- 3.218 Mr Tony O'Mara, the principal author of the critical documents, told the Commission that he did not attend Board meetings.<sup>262</sup> Mr O'Mara was employed by GRNSW from 2009 until 15 May 2015. While employed by GRNSW, he worked in connection with compliance and welfare issues. At the time when he left the organisation, he held the position of General Manager of Education and Welfare.
- 3.219 Mr O'Mara gave evidence that, back in 2009, the use of live animals in greyhound training was a concern to both GRNSW and the RSPCA.<sup>263</sup> He told the Commission that, while the material was anecdotal, it was certainly GRNSW's position that they believed that live baiting was taking place.<sup>264</sup>
- 3.220 Mr Clint Bentley, the Chief Steward at GRNSW from 2009 to date, similarly told the Commission that, in 2009, he was concerned that industry participants were engaging in live baiting and that the practice needed to be stamped out.<sup>265</sup> He agreed that there was at least anecdotal evidence that the practice was continuing.<sup>266</sup> Mr Bentley gave evidence that, in 2009, GRNSW regarded the traditional training practice of live baiting as a critical welfare issue and that it needed to be eradicated.<sup>267</sup> Mr Bentley also said that, through Board papers, it was a matter brought to the attention of the Board.<sup>268</sup>
- 3.221 GRNSW representatives raised the issue of live baiting in a meeting with RSPCA officials on 4 September 2009. Mr Bill Fanning, Mr Tony O'Mara and Mr Clint Bentley attended the meeting for GRNSW and spoke to a power point presentation. At that time, Mr Fanning held the position with GRNSW of General Manager Integrity and Racing, Mr O'Mara held the position of Member Services Manager, and Mr Bentley was the GRNSW Chief Steward.
- 3.222 Mr David OShannessy, Chief Inspector of the RSPCA, was among the RSPCA personnel at the meeting. Mr OShannessy told the Commission that, as at 2009, the RSPCA's investigations of particular complaints indicated that some persons were engaging in live baiting, and the practice was a matter of concern for the RSPCA.<sup>269</sup>
- 3.223 At the meeting with RSPCA officials on 4 September 2009, the GRNSW representatives delivered a power point presentation,<sup>270</sup> which Mr O'Mara had prepared. The power point presentation

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<sup>261</sup> Ex C (28 September – 2 October 2016).

<sup>262</sup> Transcript, 17 February, 2016, p.835.

<sup>263</sup> Ex WW (17 – 18 February). See also evidence of Anthony O'Mara, given on 17 February 2016, that as of mid-2014 the use of live animals in training of greyhounds had been "a concern for many years": Anthony O'Mara, 17 February 2016: T824.36.

<sup>264</sup> Ex WW (17 – 18 February). See also evidence of Anthony O'Mara, 17 February 2016:831.16.

<sup>265</sup> Clint Bentley, 18 February 2016: T860.38.

<sup>266</sup> Ibid, T862.7.

<sup>267</sup> Ibid, T860.44.

<sup>268</sup> Ibid, T861.3.

<sup>269</sup> David OShannessy, 18 February 2016: T882.29-36.

<sup>270</sup> Exhibit T, attachment A.

included, under the heading “Greyhound Welfare – Racing” and the sub-heading “Regulation of Breaking in establishments”, a series of bullet points as follows:

**GREYHOUND WELFARE – RACING**

**Regulation of Breaking in establishments**

- Seek registration of education and training centres
- Licencing of operators
- Compulsory probity checks on all new persons
- Disclosure statements for current licence holders
- Development of competency assessments
- Work to improve education level on welfare issues of persons involved in the early development of Greyhounds
- Eradicate the historic practice of live baiting

3.224 Mr O’Mara gave evidence to the Commission that he included the last-mentioned bullet point in the presentation – relating to live baiting – because of his understanding, as part of GRNSW’s management team, that live baiting was taking place<sup>271</sup> and, hence, needed to be eradicated.

3.225 The GRNSW Board met on 15 September 2009, being its third regulatory board meeting since the establishment of GRNSW in July 2009. Professor Allan was present; so too Mr Brent Hogan. A board paper for the Board meeting included, as Agenda item 4.0(b), a report on the “Meeting with RSPCA”.<sup>272</sup> The board paper contained commentary on the meeting with the RSPCA and included the following paragraph:

Tony O’Mara spoke on the registration and licencing functions of GRNSW, pointing out that our sport is primarily a family orientated sport, comprising of people with a passion for their dogs. It was also pointed out that the greyhound industry is a large employer with considerable expenditure in regional communities. It was further pointed out that GRNSW regulates the activities of all aspects of the greyhound life cycle, with powers of approval of artificial insemination services and facilities. **Our stance on the use of live animals in training was also discussed.**<sup>273</sup> [emphasis added]

3.226 The Board paper also attached the power point presentation that Mr O’Mara had prepared and which GRNSW representatives spoke to and outlined at the meeting with RSPCA officials on 4 September 2009.<sup>274</sup> As noted above, the power point presentation included reference to: “Eradicate the historic practice of the use of live animals in training.” In its ordinary meaning, “eradicate” means “completely destroy” or “put an end to”. Because you can’t put an end to something that doesn’t exist, this item can only be read as semaphoring the need to stamp out a practice that still existed and had been used in the industry for a very long time.

3.227 The Board paper also noted the forthcoming RSPCA inspectors’ conference, to be held at Bateau Bay on 16 September 2009, to which GRNSW representatives had been invited and would be giving a presentation.

3.228 At the Board meeting on 15 September 2009, the Board resolved that the General Manager, Racing and Integrity (Mr Fanning) review GRNSW’s animal welfare policy and report back to the Board within 3 months.<sup>275</sup> Following that Board meeting, Mr Fanning, Mr O’Mara and Mr

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<sup>271</sup> Anthony O’Mara, 17 February 2016: T831.20.

<sup>272</sup> Exhibit T.

<sup>273</sup> Ibid.

<sup>274</sup> Exhibit T, attachment A.

<sup>275</sup> Exhibit S: Minutes of Board meeting of 15 September 2009, p 2.

Bentley, together with Dr Lara Griffing (the co-ordinator of the Greyhounds as Pets Program), developed a project designed to address animal welfare issues. In time it became known as “Project Welfare”.

- 3.229 On 16 September 2009, Mr O’Mara presented a power point presentation<sup>276</sup> at the RSPCA inspector’s conference at Bateau Bay. The power point presentation repeated, as a page of the presentation, the text quoted at [3.223] above, including the bullet point reference to “Eradicate the historic practice of the use of live animals in training.”
- 3.230 In January 2010, GRNSW launched “Project Welfare”. As part of the launch process, senior GRNSW management attended a number of industry forums with industry participants.
- 3.231 In its “Project Welfare” launch and associated documentation, GRNSW management identified live baiting as an issue. GRNSW delivered a power point presentation, prepared by Mr O’Mara, at industry forums between 20 January 2010 and 25 March 2010. In the slide presentation, under the heading “Greyhound Welfare” and the sub-heading ““Other Issues”, GRNSW stated:

**GREYHOUND WELFARE**

Other Issues

- Over Racing
- Kennel Facilities
- Traditional Training Methods
- Illegal keeping of European rabbits
- Illegal use of live animals eg cats, possums, chickens etc
- Arm trials
- Opportunities for change
- Community Perception<sup>277</sup>

- 3.232 The “Project Welfare” power point presentation – which became Exhibit D in the public hearings before the Commission – refers to the use of live animals as part of traditional training techniques for greyhounds. This includes references to rabbits, cats, possums, chickens, etc. The slide also makes reference to “opportunities for change” and identifies, as an issue, “Community Perception”. This document is not shown to have been provided to the Board.
- 3.233 Mr O’Mara gave evidence to the Commission that his reference, in the third-mentioned bullet point in the presentation, to “Traditional Training Methods” was to the illegal use of live animals for training greyhounds, ie live baiting.<sup>278</sup>
- 3.234 As noted above, Mr O’Mara gave evidence of discussions with industry participants in early 2010, as part of the “Project Welfare” industry forums, at which some participants admitted using live animals to train greyhounds and expressed strong resistance to change.
- 3.235 Following the “Project Welfare” industry forums, GRNSW made findings regarding its consultations with industry. Mr O’Mara prepared a document entitled “Project Welfare Consultation Findings”.<sup>279</sup> The document is undated but was prepared following the conclusion of industry consultations in March 2010. The Findings document listed five “Key Areas

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<sup>276</sup> Exhibit QQQ.

<sup>277</sup> Ex D (28 September - 2 October 2016).

<sup>278</sup> Anthony O’Mara, 17 February 2016: T832.6.

<sup>279</sup> Ex E (28 September - 2 October 2016).

Identified". The fourth key was given the heading "Use of Animals on Tracks – Arms Trials" and included reference to the issue of live baiting as follows:

**KEY AREAS IDENTIFIED**

...

**4. USE OF ANIMALS ON TRACKS - Arm Trials**

Participants advised mixed responses in relation to the use of "rabbits" during arm trials at public tracks and the continued use of traditional training methods.

Several Clubs indicated a procedure in ordering fresh gutted carcasses unskinned from local butchers, whilst there is still evidence of rabbits being self procured.

The RSPCA has been mindful in advising GRNSW that is an offence under the NSW Prevention of Cruelty to Animals Act 1979:

For a person:

- a) Who causes, procures, permits, encourages an activity, in which an animal is released from confinement for the purpose of it being chased, confined or caught by a dog or
- b) Advertises the intention to conduct such an activity or
- c) Promotes, encourages or attends an activity or
- d) Uses an animal as a lure or kill for the purpose of bleeding greyhounds or in connection with trialling, training or racing any coursing dog or
- e) Keeps or is in charge of an animal for use as a lure or kill for the purpose of bleeding greyhounds or in connection with trialling, training or racing any coursing dog is guilty of an offence

Participants were mindful of the potential negative impact to the industry of such activities with an increasing number of trainers indicating the use of squeakers for educating greyhounds.

**Next Step:**

Stewards to develop a Policy and Procedure for the purchase and use of rabbit carcasses. Greyhound Racing Rules to be updated for Board approval to ensure compliance with relevant legislation.<sup>280</sup>

3.236 Mr O'Mara gave evidence to the Commission that his reference to "rabbits", in the first paragraph of the document quoted in [3.235] above, included live rabbits, and that the "mixed responses" was reference to industry participants who were resisting any move away from the use of live animals for training greyhounds.<sup>281</sup> Mr O'Mara also told the Commission that he had drawn this matter – the resistance by some participants to prohibiting the use of live animals for training greyhounds - to the attention of Mr Hogan, the Chief Executive.<sup>282</sup>

3.237 In 2010, there was no issue regarding the use of *dead* rabbits on lures for training greyhounds. That technique was not then prohibited nor was it then the subject of any significant debate. Rather, the reference in the Consultation Findings document – and to participants having advised mixed responses in relation to the use of rabbits during arm trials at public tracks and the continued use of "traditional training methods" – clearly includes reference to the practice of live baiting. This is consistent with the heading "Use of *Animals* on Trial Tracks" – the natural meaning of an "animal" being something that is alive rather than a carcass. The use of

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<sup>280</sup> Ex E (28 September - 2 October 2016).

<sup>281</sup> Ex WW (17 – 18 February). See also evidence of Anthony O'Mara, 17 February 2016: T834.24.

<sup>282</sup> Ex WW (17 – 18 February). See also evidence of Anthony O'Mara, 17 February 2016: T834.44.

quotations marks around “rabbits” is also a means of emphasising reference to *live* rabbits. The reference to s 21 of the *Prevention of Cruelty to Animals Act 1979* (quoted above) in the Findings document also indicates that it is the use of live rabbits that are being referred to in the discussion about traditional training methods.

- 3.238 The reference to there having been a “mixed response” in relation to the use of rabbits in respect of arm trials indicates that at least some industry participants were against any move away from live baiting as a traditional training method.
- 3.239 The Findings document also referred to participants being mindful of the potential negative impact to the industry of such practices, with an increasing number of trainers indicating the use of squeakers for educating greyhounds.
- 3.240 The “Project Welfare” findings were later absorbed into another GRNSW strategy document entitled the “Project Welfare Implementation Plan”.<sup>283</sup> That document was prepared for the Board of GRNSW.<sup>284</sup> The Board considered the document at its meeting on 27 April 2010.<sup>285</sup> The persons present at the Board meeting included Professor Allan and Mr Hogan.<sup>286</sup> The “Project Welfare Implementation Plan”<sup>287</sup> stated that it attached the “Project Welfare Consultation Findings”.
- 3.241 Under the heading “Comment”, the board document<sup>288</sup> made reference to the use of live animals in training greyhounds as being a key area identified as critical in the development of an ongoing welfare policy. The Board document stated:

As directed by the Board, Management has conducted extensive consultation with members and interest groups and have formulated the attached Consultation Findings as a precursor to formal development of a revised welfare policy. It aims to significantly address the concerns of members and provide greater regulatory control of sections of the industry previously unregulated.

The Consultation phase has seen management make eleven presentations to a wide and varied cross section of industry participants. In general there was an overwhelming endorsement for the need for change.

Eleven key areas were identified as critical in the development of an ongoing welfare policy:

- Education
- Track preparation
- Reporting of injuries (race and trial)
- **Use of ‘live’ animals in training**
- Race programming
- Licensing and registration of breeders, rearers and educators
- Transport
- GAP
- Raceday and club welfare policies
- Life cycle tracking
- Responsible breeding

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<sup>283</sup> Exhibit F.

<sup>284</sup> Ex F (28 September - 2 October 2016), Exhibit I, p 140.

<sup>285</sup> Ex H (28 September - 2 October 2016), Ex I, p 140 (28 September - 2 October 2016).

<sup>286</sup> Ex H (28 September - 2 October 2016).

<sup>287</sup> Exhibit F, Exhibit I, p 140.

<sup>288</sup> Exhibit I, p 140.

Welfare is a living issue requiring extensive cultural change within the greyhound industry to meet the growing community expectations in relation to the use of animals for sport. We are mindful of the growing welfare extremists who have been successful in utilising modern media to force closure or change in all three racing codes throughout the world.<sup>289</sup> [emphasis added]

- 3.242 Mr O'Mara, who had been involved in the preparation of the "Project Welfare Implementation Plan", quoted in [3.241] above, told the Commission that he regarded the "Use of live animals in training" as a critical issue.<sup>290</sup> The issue was identified, in the fourth bullet point, as a key area that was critical in the development of an ongoing welfare policy.
- 3.243 Somehow, for reasons that the Commission cannot understand, the references to "Use of 'live' animals in training", "the use of animals in sport" and "the growing welfare extremists who have been successful in utilising modern media to force closure or change in all three racing codes" seemingly did not alert the Board to even the possibility that that the industry had a problem with live baiting that could bring about its closure.
- 3.244 Ms Eve McGregor succeeded Professor Allan as Chair of GRNSW in February 2012. Ms McGregor remained Chair until she resigned from GRNSW on 18 February 2015 following the broadcast of the *Four Corners* program.
- 3.245 Ms McGregor gave evidence that, on her appointment, she reviewed some past Board minutes but did not review any past Board papers.<sup>291</sup> During the course of her appointment, she became aware that, traditionally, live animals had been used for the purpose of training greyhounds to race.<sup>292</sup> She also said, for her, the issue came into focus during the NSW parliamentary inquiry into the greyhound racing industry in 2013.<sup>293</sup>
- 3.246 On 14 and 15 October 2012, Ms McGregor attended a strategic planning workshop that GRNSW held at Coogee.<sup>294</sup> A document that Ms McGregor received either at or following the strategic planning workshop referred to the topic of live baiting.<sup>295</sup> Ms McGregor said that GRNSW management prepared the document.<sup>296</sup> Under a heading "Prevention of Cruelty to Animals Act 1979", the document stated:

More stringent enforcement of the Prevention of Cruelty to Animals Act 1979 by the RSPCA, local and state authorities, in particular regarding **the continued use of live animals as part of the training of greyhounds continues to represent a high risk area for the sport in NSW.**<sup>297</sup> [emphasis added]

- 3.247 The document continued:

Under the Act it's illegal to - use an animal as a lure or kill for the purpose of bleeding greyhounds or in connection with the trialling, training or racing of any coursing dog, or - keep an animal for use as a lure or kill for the purpose of bleeding greyhounds or in connection with the trialling, training or racing of any coursing dog. **There is anecdotal evidence of live animals being used as part of the training process and trainers need to be educated regarding the consequences of such practices and the impact they may have on the long-term viability of the sport. This area represents a high level of risk for GRNSW's ongoing activities,** especially given the recent prominence of animal welfare issues in mainstream society."<sup>298</sup> [emphasis added]

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<sup>289</sup> Ex F (28 September - 2 October 2016).

<sup>290</sup> Anthony O'Mara, 17 February 2016: T836.9.

<sup>291</sup> Eve McGregor, 2 October 2015: T388.21-24.

<sup>292</sup> Ibid, T390.26-34.

<sup>293</sup> Ibid, T388.36-41.

<sup>294</sup> Ibid, T395.24-26.

<sup>295</sup> Exhibit Y; Eve McGregor, 2 October 2015, T395.28-31.

<sup>296</sup> Eve McGregor, 2 October 2015, T396.28-29.

<sup>297</sup> Exhibit Y; Eve McGregor, 2 October 2015, T396.4-7.

<sup>298</sup> Exhibit Y; Eve McGregor, 2 October 2015, T395.10-19.

- 3.248 Ms McGregor agreed that the matters raised by the quoted passages above were brought to her attention in October 2012.<sup>299</sup>
- 3.249 Ms McGregor said that the entire Board of GRNSW and Mr Hogan were present at the strategic planning workshop in October 2012.<sup>300</sup>
- 3.250 Ms McGregor gave evidence that, in hindsight and following the revelations in the *Four Corners* program, “Yes, possibly there may have been steps we could have taken” (and which were not taken) to limit the prospect of live baiting occurring.<sup>301</sup>

#### **The evidence of Mr Newson**

- 3.251 Mr Paul Newson, interim CEO of GRNSW, gave evidence to the effect that, at least in 2010, the Board - as it existed at the time the Project Welfare and related documents were created - was put on notice that live baiting was taking place in the greyhound racing industry in NSW.<sup>302</sup>
- 3.252 Mr Newson further gave evidence to the effect that, in this respect, it did not matter whether there was a consensus or not as to live baiting being a problem at the time. Mr Newson told the Commission:

I have been incredulous at the concept that you could purport to be regulating an industry without understanding the risk. I’m not really persuaded that there needs to be a consensus [ie that there was a real, existing problem of live baiting]. If there’s a suggestion that there is a risk then I would suggest the regulator should be all over it.<sup>303</sup>

#### **Failure of the Board to take adequate steps in respect of live baiting**

- 3.253 The question arises did the GRNSW Board fail to take adequate steps in respect of the identified issue of live baiting?
- 3.254 In his evidence to the Commission, Mr Newson was highly critical of the leadership of GRNSW in the period prior to the *Four Corners* program. As interim CEO and a person who has immersed himself in understanding the records, history and culture of GRNSW, Mr Newson is well placed to provide the Commission with an informed view about such matters.
- 3.255 Mr Newson gave evidence that, since he became interim CEO on about 19 February 2015: “Nothing I have seen has given me remote confidence that the regulator was remotely capable of discharging its functions.”<sup>304</sup>
- 3.256 Mr Newson said he watched the *Four Corners* program. He said it was shocking, distasteful and abhorrent.<sup>305</sup>
- 3.257 Mr Newson gave evidence to the effect that, prior to the *Four Corners* program, the regulatory capability of GRNSW was wholly deficient. Mr Newson said:

The regulatory capability of GRNSW was to be kind – non-existent – but I guess to throw a better light on it, it was worse than non-existent, because there was a pretence that it was effective. And that pretence probably clouded that – that level of obligation or accountability because there was a view that it was effective when it was anything but.<sup>306</sup>

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<sup>299</sup> Eve McGregor, 2 October 2015: T396.

<sup>300</sup> Ibid, T397-14-18.

<sup>301</sup> Ibid, T397-29-32.

<sup>302</sup> Paul Newson, 2 October 2015: T400.9.

<sup>303</sup> Ibid, T400.17-20.

<sup>304</sup> Ibid, T400.25-26.

<sup>305</sup> Ibid, T400.34-35.

<sup>306</sup> Ibid, T400.43-401.3.

3.258 Mr Newson further said:

.. the leadership of the organisation (GRNSW) was deficient from a regulatory welfare perspective ... And by leadership I mean whether there was limited or no strategic vision or anything. There was demonstrably no understanding of risk in the environment. There was either no, or inadequate, or completely immature practices and procedures. There was no coherent strategy compliance or meaningful welfare strategy. There was an awareness of strategic issues. There was no meaningful engagement with those issues.”<sup>307</sup>

3.259 To similar effect, Mr Newson said that there was an absence of understanding and an absence of capability (in leadership positions). He said: “If I was to be blunt, the people in the positions that they were in had no business being in those positions from a regulatory welfare perspective.”<sup>308</sup>

3.260 Mr Newson pointed also to deficiencies in record keeping and case management. He said:

When I commenced [in late February 2015], there was no adequate information and management system. The document management relied on almost goodwill. There’s a shared folder directory. There is a very unstructured and ill-disciplined approach to maintaining documents and records. I should say there has been - historically - from what I have been able to observe - there has not been a case management system. Now, for a reasonably, a reasonably small regulatory body, you wouldn’t need a highly sophisticated system; but there was nothing. So, without at least rudimentary intelligence or case management system there was no way to harvest, to funnel the intelligence and maintain an awareness of what compliance or investigative activities were actually occurring. There was also no investigator when I commenced.”<sup>309</sup>

3.261 Mr Newson also gave evidence that, as indicated in an Internal Audit Bureau report published in 2014, the regulatory compliance unit within GRNSW was significantly under-resourced. 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 doing that process.<sup>310</sup>

3.262 Mr Tony O’Mara gave evidence to the effect that the compliance and regulatory section of GRNSW was under-resourced during the period he was there. He shared the view, stated by Internal Audit Bureau, that the compliance and inspection functions of GRNSW were chronically under-resourced.<sup>311</sup>

3.263 Mr O’Mara further said that in May 2015, at the time he left GRNSW, the compliance and inspection unit within GRNSW was still under-resourced. He said the ideal number of inspectors was six, and GRNSW had only three.<sup>312</sup>

### ***Changes to lure policy***

3.264 In April 2015, GRNSW took particular steps related to the practice of live baiting. It changed the Greyhound Racing Rules to impose a minimum period of suspension of 10 years for keeping small animals that might be used as live baits. GRNSW also banned the use of rabbit carcasses and, pending further research by the Working Dog Alliance, stipulated that “professionally tanned skins” could be used instead.

3.265 On 2 November 2015, GRNSW announced that it would amend its policy on lures by prohibiting the use of tanned and professionally processed animal skins for the purposes of trialling or educating greyhounds from 1 December 2015. The effect of the amendment is that, for the first

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<sup>307</sup> Paul Newson, 2 October 2015: T400. 8-17.

<sup>308</sup> Ibid, T401.27-28.

<sup>309</sup> Ibid, 401.41-402.7.

<sup>310</sup> Ibid, 403.26-35.

<sup>311</sup> Ex WW (17 – 18 February), p 6

<sup>312</sup> Ex WW (17 – 18 February).

time, all lures used in greyhound training, education or racing must be made of purely synthetic materials only.

## Summary of findings

- 3.266 The practice of live baiting is inherently cruel and barbaric. It is unacceptable in a modern society. It should form no part of the greyhound racing industry.
- 3.267 The practice also affects the integrity of the greyhound racing industry. Persons who engage in the practice of live baiting do so to gain an unfair competitive advantage. Those persons intend to cheat.
- 3.268 At least for some greyhounds, the use of live baiting can enhance greyhound performance. This affects the integrity of the sport. Punters are generally not aware of the dogs that have been blooded and those that have not.
- 3.269 For a significant number of greyhounds, the exposure to live baiting can adversely affect them for the rest of their lives, by increased predatory aggression. These dogs can be difficult to manage and to rehome once their racing career is over (if it ever started). Such dogs also present an increased risk of acting violently against young children or other pets.
- 3.270 The practice of live baiting is a traditional training method for greyhounds for “tin hare” racing. It has been used for many decades, probably for nearly a century. Many persons involved in the greyhound racing industry were introduced from an early age to live baiting as being an acceptable training method.
- 3.271 The Commission accepts that, at least up until the time of the *Four Corners* program in February 2015, the practice of live baiting was widespread in the greyhound racing industry in NSW. It was engaged in by at least a very significant number of participants.
- 3.272 The Commission accepts that not every greyhound trainer or owner was involved in live baiting, and that many trainers are dedicated people with a proper respect for animal welfare generally. They are persons who do not and would not countenance live baiting. The Commission is of the view, however, that a very sizeable proportion of industry participants had, from time to time, engaged in live baiting as a method of training greyhounds. The Commission finds that the practice was, in effect, rampant and chronic. In the main, persons engaged in live baiting because that is what other people in the industry had done or were doing and that it was a long-standing method of training a dog to be a better chaser. Further, the practice of live baiting was not limited to particular geographical areas.
- 3.273 The Commission accepts the evidence of the particular witnesses summonsed to give evidence regarding their admissions of having being involved in the practice of live baiting. This includes Wayne Smith, Adam Wallace, Todd Fear, Majella Ferguson, Witness Z, Tracey Becroft and Norm Becroft. Their evidence was contrary to interest and, in the main, given in convincing terms. Unsurprisingly, the evidence as to their own involvement was not the subject of any challenge.
- 3.274 Mr Bruce Carr gave evidence at a private hearing before the Commission and denied any involvement in live baiting. At the public hearings, Mr Carr changed his position and admitted engaging in live baiting over a five year period but said he had stopped the practice over two years earlier. The Commission is comfortably satisfied that Mr Carr’s involvement in live baiting was much greater than he was prepared to admit. The Commission accepts the evidence of Adam Wallace that he attended Mr Carr’s property in about October 2014 to use the bull-ring, and that Mr Carr supplied live rabbits that he affixed to the arm of the lure. Mr Fear gave evidence to similar effect, which the Commission accepts. The evidence of these witnesses was self-incriminatory and was persuasive.

- 3.275 The Commission also accepts the evidence that the bull-ring at Mr Carr's property was very popular and that persons who attended to engage in live baiting at the bull-ring with live rabbits that Mr Carr supplied, often had to wait in turn to use Mr Carr's services.
- 3.276 Harry Sarkis denied involvement in live baiting at his property. The Commission accepts, in particular, the evidence of Adam Wallace and Todd Fear that they each participated in live baiting at the bull-ring at Mr Sarkis' property at which Mr Sarkis was present and involved. Again, such evidence was against interest and convincing. By contrast, Mr Sarkis was an unimpressive witness. He was evasive and argumentative in answering questions. He was also unconvincing in seeking both to explain the presence of live rabbits on his property generally and in his suggestion of persons utilising his bull-ring for live baiting without his knowledge or involvement. The Commission is comfortably satisfied that Mr Sarkis engaged in live baiting of greyhounds at his property,<sup>313</sup> in the manner identified in the evidence of Mr Wallace and Mr Fear.
- 3.277 The Commission finds that, at least in 2009 and continuing to at least February 2015, the practice of live baiting was firmly enmeshed, and widespread, in the greyhound racing industry in NSW. Further, GRNSW management, and the Board, were in 2009 and 2010 put on notice that live baiting was a key issue facing the industry. GRNSW management was also aware that there was vocal resistance to any steps being taken to remove the use of live rabbits as a traditional training method.
- 3.278 GRNSW management raised the issue of live baiting in a meeting with RSPCA officials on 4 September 2009. Mr O'Mara's power point presentation included reference to the need to "Eradicate the historic practice of live baiting". He was of the belief, as part of GRNSW's management team, that live baiting was taking place and needed to be eradicated.
- 3.279 The Board paper for GRNSW's Board meeting on 15 September 2009 made reference to the use of live animals in training as being a matter discussed with RSPCA. The Board paper also attached a copy of Mr O'Mara's power point presentation that, as a bullet point matter under the heading of "greyhound welfare", stated "Eradicate the historic practice of live baiting".
- 3.280 The power point presentation that GRNSW officers delivered to the RSPCA representatives at the meeting on 4 September 2009 makes clear that GRNSW management regarded there as being a problem in the fact that breaking-in establishments of the type operated by Mr X and Bruce Carr were unregulated, and that there was a need to "eradicate" the historic practice of using live animals in greyhound training. This may be taken to include the practice of live baiting at such breaking-in establishments.
- 3.281 The Commission has no doubt that the reference to "the historic practice of the use of live animals in training" clearly refers to an existing practice of live baiting in the greyhound industry, and which GRNSW management perceived to be a matter of concern. The reference to "eradicate" the practice makes clear that live baiting was a then current phenomenon in the industry that should be dealt with. This is the ordinary and natural meaning of the words used.
- 3.282 In evidence, Professor Allan, the Chair of GRNSW at relevant times, refused to accept that the Board paper and its Power Point attachment showed that live baiting was an issue. He asserted that the word "historic" meant that it was a past, not a current, practice.<sup>314</sup> He said, "frankly if I was going through these Board papers I would not read into this other than that we – this was

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<sup>313</sup> The Commission makes no finding as to whether or not Mr Sarkis (or Mr Carr) relevantly committed any criminal offence. This is no task of the Commission. Further, the question of criminal liability would depend upon proof beyond reasonable doubt in light of the particular evidence adduced, and defences raised, in particular proceedings.

<sup>314</sup> Professor Percy Allan, 1 October 2015: T365.6-8.

consistent with our policy of eradicating this practice if it ever turns up. That's how I would see it." He said, "No one in management came to us and said that live baiting was an issue. Not once. Not once. Nor did any of the clubs and in our stakeholder forums when we raised the issue no one said it was a current issue. That's where I come from."<sup>315</sup> Throughout his evidence Professor Allan maintained that, whenever he asked whether live baiting was an issue, he was told that it used to happen but it did not happen any longer.<sup>316</sup> He said that live baiting was never brought to his attention as a problem on any occasion. He said "Not once. Nobody ever wrote to me, approached me, not one person from the media. Not one participant, not one club. Nobody from management. No one ever told me that live baiting was occurring. I raised it at times with people in forums. I also raised it with the Board and the answer was always the same, "Percy, it used to happen a long time ago. It's a thing of the past."

- 3.283 At the meeting on 15 September 2009, the Board directed Mr Fanning to prepare an animal welfare policy. This became known as "Project Welfare".
- 3.284 Documentation associated with the launch of "Project Welfare" by GRNSW management, made reference to traditional training methods and the illegal use of live animals (Exhibit D). It also referred to "opportunities for change" and "community perception." The Commission is firmly of the view that, on any reasonable reading of the document, the "Project Welfare" power point presentation that Mr O'Mara presented clearly indicates the awareness of GRNSW management, as at early to mid-2010, that live baiting was a traditional training method for greyhounds, that it was a matter that should be the subject of efforts to change ("opportunities for change") and that it raised issues of community perception.
- 3.285 In 2010, following the "Project Welfare" industry consultations, Mr O'Mara prepared a further document entitled "Project Welfare Consultation Findings" (Exhibit E). That document identified, as a key area, the use of animals on tracks and included reference to the issue of live baiting. The document's reference to a "mixed response" in relation to the use of rabbits for arm trials clearly indicates that at least some industry participants were against any move away from live baiting as a traditional training method.
- 3.286 A further document from GRNSW management, entitled "The Project Welfare Implementation Plan", was similarly provided to the Board. It identified the use of live animals in training greyhounds as being a key area that was critical in the development of an ongoing welfare policy. As was the case with the earlier Board paper and Power Point attachment, Professor Allan refused to accept that these documents put the Board on notice that live baiting was occurring. Under cross-examination<sup>317</sup> by Counsel Assisting, he refused to face up to the language of the documents and sought to explain their contents in ways that the Commission does not accept.
- 3.287 The Commission is of the view that, from 2009 onwards, the Board of GRNSW was on notice that live baiting was regarded by GRNSW management as a problem in the greyhound racing industry in New South Wales.
- 3.288 As further noted, in October 2012 GRNSW held a strategic planning meeting in Coogee. Ms McGregor gave evidence of having read a document prepared by GRNSW management, in relation to that meeting, that referred to the topic of live baiting. Relevant quotations from the document are set out above. The document clearly stated that the continued use of live animals as part of the training of greyhounds continues to represent a high risk area for the sport in NSW. The document also referred to anecdotal evidence of live animals being used as part of the

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<sup>315</sup> Professor Percy Allan, 1 October 2015: T365.31-34.

<sup>316</sup> Ibid, T363.23-27.

<sup>317</sup> Ibid, T369-375.

training process **and** trainers need to be educated regarding the consequences of such practices and the impact they may have on the long-term viability of the sport. The issue of live baiting was said to represent a high level of risk for GRNSW's ongoing activities. The Commission is of the view that the document put Ms McGregor, Chair of GRNSW, on notice that the practice of live baiting was a continuing problem for the industry. It needed to be properly addressed. GRNSW failed to do so. As Ms McGregor, in hindsight, effectively acknowledged, there were steps that GRNSW could have taken, but did not, to address the limit the prospect of live baiting occurring.

- 3.289 The Commission finds that, despite being on notice of the practice, GRNSW failed to take adequate steps to deal with the issue of live baiting in the NSW greyhound racing industry.
- 3.290 In submissions to the Commission in respect of these matters, Board members (of the pre-February 2012 Board), including Professor Allan, denied that they were put on notice that live baiting was occurring. They denied that management or anybody else had ever raised live baiting concerns with them. Similarly to what Professor Allan told the Commission, one Board member said that, while he was on the Board there was not a report, allegation or rumour of a live baiting incident from management including Mr O'Mara, the media, and animal welfare organisations, racing participants including GRICG, or anyone else.
- 3.291 In his very lengthy submission,<sup>318</sup> Professor Allan said that the "Power Point slide that said GRNSW would 'eradicate' the historic practice of live baiting...was a restatement of existing policy to eradicate live baiting where it could be detected, not a statement that it was a problem as it had been historically." He said that he took that to mean and he "was sure other members of the industry Board...took that to mean 'where live baiting was uncovered by GRNSW or reported to it'." He said that the "Board took the inverted commas around 'rabbit' in the attachment "to a Board Paper that referred to the use of 'rabbits' in arm trials for training dogs ...to mean dead rabbits bought from butchers by registered training facilities for use on arm lures at their tracks." He said that the "Board decision to make live baiting a 'key area' covered in any new animal welfare policy...was a decision to repeat the existing ban on live baiting in a new welfare policy because to do otherwise would have sent the wrong message to greyhound trainers."
- 3.292 Professor Allan said that the RSPCA did not raise live baiting as one of its animal welfare concerns with GRNSW in 2009 – 2010, that GRNSW management did not list live baiting as one of the 55 key issues that needed to be addressed in a new strategic plan and that his Board endorsed all proposals on animal welfare including a ban on live baiting submitted to it by management. Professor Allan also said that the reference to an 'Arm Trial' referred to a "trial where the greyhound is allowed to catch and grab an artificial lure after running a nominated distance". Another Board member supported this view of the term. Professor Allan and another Board member also said they understood references to traditional training methods as referring to the use of carcasses on lures.
- 3.293 The Commission accepts the statements of the pre-2012 Board members that management did not orally inform them of the problem of live baiting in the industry. However, the Board had documents before it whose ordinary and natural meaning drew attention to the existence of live baiting being a problem. The Commission does not accept the interpretations that Professor Allan sought to put on some of the key terms, sentences and phrases. As the Commission has mentioned, in its ordinary meaning, "eradicate" means "completely destroy" or "put an end to". Because you can't put an end to something that doesn't exist, the reference to eradicating the historic practice of live baiting can only be read as semaphoring the need to stamp out a practice

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<sup>318</sup> 8 June, 2016, p 2.

that still existed and that had been used in the industry for a very long time. Nor can the Commission accept the gloss that Professor Allan sought to add to the item, viz., “where live baiting was uncovered by GRNSW or reported to it.” The document was not speaking of dealing with a problem if, and when, it arose. It was speaking of an existing problem that had to be attended to. In his evidence, Mr O’Mara made it plain that what was what he intended to convey in the documents that went to Board. The Board seemingly misunderstood what was being put to it.

3.294 Similarly, the Commission cannot understand why the references to “Use of ‘live’ animals in training”, “the use of animals in sport” and “the growing welfare extremists who have been successful in utilising modern media to force closure or change in all three racing codes” did not alert the Board to the fact that the industry had a problem with live baiting that could bring about its closure. What other meaning could the reference to “[u]se of ‘live’ animals in training” have than that live animals were being used in training? It would be a curious use of language – and for that matter of interpretation – to regard “live” as meaning “dead”.

3.295 The Commission is satisfied that the Board erred in understanding what management was putting before them. If that error had not occurred, it is likely that the Board would have taken action requiring management to investigate the nature and extent of the live baiting problem.

3.296 As Professor Percy Allan pointed out in a Submission to the Commission,<sup>319</sup> his Board was conscious of animal welfare issues and took a number of steps to improve animal welfare. They included:

- Replacing all two tier kennel boxes with one tier ones to avoid dogs being injured when alighting from them.
- Providing all clubs with stretchers and medical equipment to attend to dog injuries during races.
- Funding vets on tracks for all races to ensure that any dog injuries were attended to immediately.
- Establishing Greyhounds as Pets with a dedicated GRNSW officer after it became clear that the volunteer-run Greyhound Adoption Program adopted out few greyhounds.
- Introducing the “Greenhounds” program to train greyhounds to become pets at the end of their racing career.
- Persuading the State government to de-muzzle “Green Collar” greyhounds in public to make it easier to have them adopted (rather than euthanized) at the end of their racing career.
- Amending the “no drugs in greyhound racing” edict that had prevented dogs from being treated for Pannus (an eye disease) which caused them to go blind.
- Investing in kennel facilities within NSW prisons to enable inmates to train racing dogs to become pets, an initiative that also helped their own rehabilitation (as featured on ABC TV’s Stateline program).
- Creating the Greyhound Welfare and Veterinary Services Unit within GRNSW to replace private vets at TAB meetings and to provide expert advice to GRNSW.

3.297 The Commission is comfortably satisfied that the documentary evidence demonstrates that the pre-February 2012 Board was informed that live baiting was occurring but erred in understanding the meaning and purpose of the documentation that it received.

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<sup>319</sup> Professor Percy Allan, Submission 7 to the Commission dated 20 May 2015, p. 2.

- 3.298 A possible explanation of the Board’s failure to deal with live baiting is that the Board members did not read the documents put before them as carefully that they should have. When Professor Allan was asked<sup>320</sup> whether he had read the Board paper of 15 September, 2009, he said that he assumed he had. He said that at “every Board meeting I’d try to [be] conscientious and read things but did I track every word and every sentence? Maybe not. I tried to get the gist.”
- 3.299 The Commission is also comfortably satisfied that Ms McGregor, Chair of the post-February 2012 Board, was informed at or following the strategic planning forum at Coogee on 14-15 October 2012 that live baiting was occurring.. Ms McGregor acknowledged that, in connection with the forum, she had read a document prepared by management that stated:
- “More stringent enforcement of the Prevention of Cruelty to Animals Act 1979 by the RSPCA, local and state authorities, in particular regarding **the continued use of live animals as part of the training of greyhounds continues to represent a high risk area for the sport in NSW.**”<sup>321</sup> [Emphasis added]
- 3.300 Yet, so far as the Commission is aware, adequate steps were not taken to deal with this “high risk area for the sport”.
- 3.301 The Commission is also comfortably satisfied that the GRNSW management team knew that live baiting was a potential problem for the industry but failed to set up an investigatory process that might have resulted in stopping or reducing the barbaric practice that the *Four Corners* program exposed. Indeed, management had participated in forums and in a meeting with the RSPCA where the matter was discussed.
- 3.302 Given the undoubted knowledge of other GRNSW witnesses, such as Mr O’Mara and Mr Bentley, concerning live baiting, Mr Hogan’s position and knowledge of the industry and the unambiguous language of the documents to which the Commission has referred,<sup>322</sup> the Commission cannot accept Mr Hogan’s evidence that he thought the references in the documents - including to the “use of ‘live’ animals in training”<sup>323</sup> - were to the use of dead animals. The Commission is firmly of the view that, from 2009 onwards, Mr Hogan was on notice that live baiting was a continuing problem in the greyhound racing industry in NSW and that it needed to be addressed.
- 3.303 The Commission also finds that the compliance and inspection functions of GRNSW were chronically underfunded in the period 2009 to at least February 2015. Many industry participants either never had their properties inspected by GRNSW (and its predecessor) or had been the subject of a single inspection many years ago. The absence of a system of periodic and unannounced inspections is likely to have helped foster an attitude by persons involved in live baiting that they were highly unlikely to be caught. This did nothing to curb, and was likely to have encouraged, the barbaric practice.
- 3.304 GRNSW did not take any steps before 2015 to ban the use of rabbit carcasses for training greyhounds or stipulate that only synthetic lures can be used for training or racing greyhounds. The Commission notes that, since April 2015, GRNSW has banned the use of rabbit carcasses for training greyhounds and, from December 2015, has stipulated that only synthetic lures can be used. Such measures are, at least in part, aimed at attempting to move the industry away from a culture that relies on other animals – whether alive or dead – in the training of greyhounds. There is no cogent reason why such steps could not have been taken from about 2010 onwards.

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<sup>320</sup> Professor Percy Allan, 1 October 2015: T363.44-264.1.

<sup>321</sup> Exhibit Y; Eve McGregor, 2 October 2015, T396-4-7.

<sup>322</sup> Documents to which Mr Hogan had access in 2009 included Ex E (28 September – 2 October 2016) and Ex F (28 September – 2 October 2016).

<sup>323</sup> Brent Hogan, 18 February 2016: T907.39-42.

- 3.305 The Commission accepts the evidence of Mr Newson that there was a failure of leadership within GRNSW to take any adequate steps towards dealing with the problem of live baiting. Indeed, GRNSW management moved in a very slow fashion, if at all, and in a manner that appeared to accept the existence of, rather than to challenge and seek to eradicate, the practice of live baiting. There were also deficiencies in record keeping systems and case management.
- 3.306 As history indicates, the practice of live baiting is highly resistant to eradication. The practice has existed for many decades, probably centuries. It is typically practiced on private properties, far removed from public view. Very occasionally, it becomes the subject of public scrutiny – such as in 1953, 1967 and the present time. Like bamboo removal, however, attempts at eradication can be unsuccessful. The fact that, as recently as March 2016, GRNSW was investigating reports of persons having engaged in live baiting at a racetrack in late 2015, suggests that the practice is highly resilient. Persons who engage in live baiting do so because, among other reasons, they believe it may give them a competitive advantage against some other trainers. Conversely, if they do not engage in live baiting they are at risk of being at a competitive disadvantage given that, in their reasonably held view, many other participants also engage in the practice.
- 3.307 Given these views, and the highly entrenched nature of live baiting as a traditional training method, there is a very real risk that, once the harsh spotlight of this Commission is removed from the industry, the practice of live baiting will thrive once more. It is imperative that regulators take all available steps to try to ensure that this does not occur. That said, as history suggests, there is reason for pessimism on this front.
- 3.308 The Commission is also of the view that, quite apart from any potential criminal liability, there should be no place in the greyhound racing industry for any person who is properly found to be involved in live baiting. Disqualification for life is not too harsh a penalty.<sup>324</sup>

## Recommendation

2. The Greyhound Racing NSW Rules of Racing (“Rules of Racing”)<sup>325</sup> should be amended to provide a penalty of disqualification for life for any person found to be involved in the practice of live baiting.

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<sup>324</sup> The Tasmanian Report recommended that there should be a mandatory penalty under the Rules of Racing that any person found guilty of live baiting is disqualified from the industry for life: *Final Report: Review of Arrangements for Animal Welfare in the Tasmanian Greyhound Racing Industry* (13 March 2015), pp 6, 24.

<sup>325</sup> References to the Rules of Racing include relevant national rules and local rules.

## 4 Deception of the public by GRNSW: misreporting of injuries and failure to report the deaths of dogs at race tracks

### Introduction

- 4.1 As will be seen, the Commission’s investigations uncovered evidence that Greyhound Racing NSW (“GRNSW”) has engaged in the deliberate misreporting to the public of the extent of injuries suffered by greyhounds at race tracks. Further, GRNSW has also deliberately failed to make available to the public – and thus, in effect, concealed – information about deaths of greyhounds at race tracks, both as to fatalities during races and dogs that have needed to be put down by the on-track veterinarian as a result of catastrophic injuries suffered during a race.
- 4.2 The conduct of GRNSW involves the deception of members of the public. The public includes both punters – for whom information as to the extent of injuries suffered is relevant – and persons and organisations with a particular concern about the welfare of greyhounds. That GRNSW has engaged in such conduct is relevant to the industry’s continuing social licence to operate.
- 4.3 Further, GRNSW engaged in the conduct knowingly, and with the clear intent of ‘sanitising’ the information that became available to the public about the injuries suffered by greyhounds, with the hope that, by doing so, it would avoid substantial criticism of the greyhound racing industry in NSW. To similar effect, the non-reporting of deaths on tracks was intended, by GRNSW, to avoid criticisms of the industry. As one on-track veterinarian was told, deaths on track were not recorded in stewards’ reports because to do so would “stir up the greenies”.
- 4.4 The impugned conduct of GRNSW came to light only as a result of the Commission’s investigations. Without the Commission being in place, GRNSW may never have changed its practices regarding such matters.
- 4.5 The relevant conduct of GRNSW became a focus of attention at the Commission’s public hearings.<sup>326</sup> Relevant personnel were examined before the Commission including Dr Gregory Bryant, previously an on-track veterinarian with GRNSW; Mr Tony O’Mara, formerly the General Manager of Education and Welfare at GRNSW; Dr Elizabeth Arnott, GRNSW’s Chief Veterinary Officer, Mr Brent Hogan, GRNSW’s Chief Executive until February 2015, and Mr Paul Newson, GRNSW’s interim Chief Executive from February 2015 to date.

### GRNSW stewards’ reports

- 4.6 GRNSW stewards prepare reports at the conclusion of race meetings. GRNSW publishes the stewards’ reports online on its website.<sup>327</sup>

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<sup>326</sup> The conduct of GRNSW in misreporting the extent of injuries and failing to make available to the public information about deaths of dogs at tracks was not shown to have been considered or endorsed by the GRNSW Board.

<sup>327</sup> GRNSW website, “Stewards Reports”; <<http://www.thedogs.com.au/Racing/StewardsReports.aspx>> (accessed 19 May 2016); Dr Gregory Bryant, 18 November 2015: T640.10.

- 4.7 If they are accurate and complete, stewards' reports are an important means by which members of the public, including punters and bookmakers, can obtain information about how individual dogs performed in the race in question. Stewards' reports can and do record such matters as whether a greyhound suffered interference, started slowly or suffered injury. The stewards' report is a key source of information as to why a dog may have performed as it did in the race in question. It is information which is relevant for punters and bookmakers in assessing the greyhound's chance of success in future races.<sup>328</sup>
- 4.8 Mr Clint Bentley, the former Chief Steward at GRNSW, said in evidence before the Commission that a stewards' report:
- ... is a document that's targeted to the wagering public. It's designed for persons who wish to ... wager on greyhound racing to obtain more information in relation to races.<sup>329</sup>
- 4.9 Mr Bentley also recognised that other persons, including animal welfare organisations, might seek to rely on the accuracy of information contained in stewards' reports.<sup>330</sup>
- 4.10 Stewards' reports also provide a means by which GRNSW can provide information to the public about the number of deaths at tracks.<sup>331</sup> This arises in a context where, for many years, animal welfare organisations such as RPSA, and political parties such as The Greens, have been calling for transparency by GRNSW in relation to greyhound deaths and injuries on tracks.<sup>332</sup> As will be seen, however, GRNSW management took steps to ensure that information about deaths on tracks was not made available to the public, in stewards' reports.

## The evidence of Dr Gregory Bryant

- 4.11 In so far as the investigations of the Commission are concerned, the impugned conduct of GRNSW first came to light, at least in part, through evidence obtained from a conscientious, former on-track veterinarian, Dr Gregory Bryant.
- 4.12 Dr Bryant is a qualified veterinary surgeon. He graduated in 1982 and thereafter worked as a veterinarian in small animal practices in Australia and the United Kingdom. He has also taught TAFE courses relating to veterinary nursing and animal science.<sup>333</sup>

### Dr Bryant's work as an on-track veterinarian for GRNSW

- 4.13 From June 2014 to August 2015, Dr Bryant worked as an on-track veterinarian for GRNSW. He worked at numerous race tracks, including Wentworth Park, Richmond, Bulli, Dapto, Goulburn, Nowra, Gosford, Newcastle, Maitland and Bathurst. On average, Dr Bryant worked at four to five meetings a week.<sup>334</sup>
- 4.14 Dr Bryant described the process by which he would, before the races commenced at a particular meeting, examine the dogs that had been entered and check for any indications they were injured.<sup>335</sup> He would also examine dogs that the steward referred to him after a race, or which

<sup>328</sup> Ex WW (17-18 February 2016), p. 40; Dr Gregory Bryant, 18 November 2015: T640.14; Dr Elizabeth Arnott, 19 November 2015: T712.14; Brent Hogan, 17 February 2016: T774.14-17.

<sup>329</sup> 17 February 2016: T843.37-39.

<sup>330</sup> 17 February 2016: T844.39-41.

<sup>331</sup> Evidence before the Commission indicated that euthanasia of greyhounds on-track are reported in stewards' reports in other States, for example, in Western Australia and Victoria: Ex TT (17-19 November 2015), p. 2.

<sup>332</sup> Dr Elizabeth Arnott, 19 November 2015: T714.21-30.

<sup>333</sup> Dr Gregory Bryant, 18 November 2015: T622-623. Dr Bryant also spent time in employment unrelated to veterinary practice: T623.8-12.

<sup>334</sup> 18 November 2015: T624.16.

<sup>335</sup> 18 November 2015: T625-628.

he otherwise regarded as in need of a post-race inspection.<sup>336</sup> As stated by Dr Bryant, the officiating steward is in sole control of the race meeting, and the on-track veterinarian's role was simply to give advice to the steward.<sup>337</sup>

### **Dr Bryant attempts to provide stewards with completed forms regarding injuries**

- 4.15 Dr Bryant told the Commission that he made a record of any injuries he found when he examined a dog at the track. He noted the injury on a race program he had. He then made the officiating steward aware of the injury, either by phone or face-to-face, at the race meeting.<sup>338</sup>
- 4.16 Dr Bryant identified, for the Commission, a document, "Veterinary Surgeon Officiating at NSW Greyhound Race Meetings", which is marked "revised draft April 12". On its face, it appears to be a GRNSW document. Dr Bryant said that, when he commenced as an on-track veterinarian, GRNSW did not provide him with any explanatory material. However, by his own researches, Dr Bryant found the document online.<sup>339</sup>
- 4.17 The document included two annexures – one entitled "Veterinary Surgeon's Treatment Report", the other entitled "Veterinary Surgeon's or Steward's Report of Injury" – that appear apt to be filled in by an on-track veterinarian, and which could provide a record of any injury ascertained and treatment applied to a dog at a track. Dr Bryant said that, when he commenced as an on-track veterinarian, he started to use these two annexure documents to record injuries but that various stewards told him he did not need to. Dr Bryant persisted for a few weeks in using the form but the stewards did not want to take them from him. He said he was discouraged from using the forms. The stewards told him everything was done online and entered into the computer.<sup>340</sup> This was a reference to the steward entering information online into the OzChase database.

### **Dr Bryant's diary – 10 January 2015 to 8 August 2015**

- 4.18 From 2015, Dr Bryant started to keep a detailed diary of his attendances at race meetings, as the on-track veterinarian, and the deaths and injuries of dogs he there encountered. Dr Bryant's diary records information in connection with 96 race meetings that he attended as the on-track veterinarian from 10 January 2015 to 8 August 2015.
- 4.19 Dr Bryant's diary records that, during the relevant period, 13 dogs died on racetracks where he was the on-track veterinarian. Dr Bryant 'put down' 12 of the dogs after they suffered substantial injury in a race; the other dog died on-track during the race.<sup>341</sup>
- 4.20 Dr Bryant's diary also records a very substantial number of injuries, many of them of significant in nature, which he observed greyhounds having suffered during the period.

### **GRNSW fails to report deaths of dogs at tracks in stewards' reports**

- 4.21 Dr Bryant gave evidence that, while working as an on-track veterinarian, he observed that stewards' reports did not record the fact that a dog has been euthanased at the track. This is also readily apparent from a comparison of the entries in Dr Bryant's diary for the 13 dogs that

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<sup>336</sup> 18 November 2015: T630.29-31.

<sup>337</sup> 18 November 2015: T629.25-31; Ex CC (17-19 November 2015), p. 3.

<sup>338</sup> 18 November 2015: T631.32-632.2.

<sup>339</sup> 18 November 2015: T625.9; Ex CC (17-19 November 2015).

<sup>340</sup> 18 November 2015: T633.1-3.

<sup>341</sup> 18 November 2015: T637.19; Ex EE (17-19 November 2015).

died at the track from 10 January 2015 to 8 August 2015, with the corresponding stewards' reports.<sup>342</sup>

- 4.22 The relevant stewards' reports either do not report the euthanased dog as having suffered any injury at all – such as in the case of “Charming Haze”, euthanased at Richmond on 17 January 2015<sup>343</sup> – or simply record the dog as having suffered some type of injury, but not as having been put down.
- 4.23 Thus, for example, Dr Bryant's diary records that, in race 3 at Wentworth Park on 30 January 2015, the dog named “Are Vee Pea” “fell and died on track” from a fractured neck. The corresponding stewards' report simply states: “A veterinary examination of ARE VEE PEA (2) revealed an injured neck.”<sup>344</sup>
- 4.24 To similar effect, Dr Bryant' diary records that a dog named “Tribal Beat” was euthanased after suffering a hock injury in race 9 at the same race meeting on 20 January 2015 at Wentworth Park. The stewards' report simply states: “A veterinary examination of TRIBAL BEAT (3) revealed an injured offside hock.”<sup>345</sup>
- 4.25 Table 4.1 summarises the references in the relevant stewards' reports in connection with each of the 13 dogs that were ‘put down’ or died on-track at the 96 race meetings that Dr Bryant attended, as the on-track veterinarian, from 10 January 2015 to 8 August 2015.
- 4.26 As revealed by Dr Bryant's diary and a comparison with corresponding stewards' reports, it is apparent that the practice of GRNSW was not to record deaths of dogs in stewards' reports, but rather to include some description of an injury or no report at all.

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<sup>342</sup> The document recorded only Dr Bryant's personal experience. A further document tendered in the Commission's public hearings recorded that, in the period from 1 November 2014 to 31 October 2015, there were 135 deaths of greyhounds on NSW TAB racetracks: Ex UU (17-19 November 2015); Dr Elizabeth Arnott, 19 November 2015: T728. The figure excludes deaths during trials or on non-TAB tracks: Dr Elizabeth Arnott, 19 November 2015: T727.31.

<sup>343</sup> Ex FF – Part 1 (17-19 November 2015).

<sup>344</sup> Ex FF – Part 1 (17-19 November 2015). Note that, in each instance, the bracketed number given after the name of the dog in the stewards' report is a reference to the number the dog was given in the race in question.

<sup>345</sup> Ex FF – Part 1 (17-19 November 2015).

**Table 4.1 Comparison of selection of Dr Bryant’s diary entries with GRNSW stewards’ reports: discrepancies in recording of injuries, deaths and incapacitation periods<sup>346</sup>**

	Name of greyhound	Date dog died or put down at track	Race track	Description in stewards’ report
1	“Charming Haze”	17/1/2015	Wentworth Park (post-race trials)	Not reported
2	“Mr Red Fox”	21/1/2015	Richmond	“A veterinary examination of ‘MR REDFOX’ (7) revealed an injured near side fore leg.”
3	“Are Vee Pea”	30/1/2015	Wentworth Park	“A veterinary examination of ‘ARE VEE PEA’ (2) revealed an injured neck.”
4	“Tribal Beat”	30/1/2015	Wentworth Park	“A veterinary examination of ‘TRIBAL BEAT’ (3) revealed an injured offside hock”
5	“Aroldis”	4/2/2015	Richmond	“‘AROLDIS’ (3) was vetted and found to have an injured nearside shoulder, with the greyhound referred for further veterinary treatment”
6	“Don’t Tell Fil”	20/2/2015	Wentworth Park	“A veterinary examination of ‘DON’T TELL FIL’ (7) revealed an injured near side shoulder”
7	“Cosmic Bob”	24/2/2015	Goulburn	“A veterinary examination of ‘COSMIC BOB’ (3) revealed the greyhound had fractured its nearside hock”
8	“Black Ace”	2/3/2015	Wentworth Park	“‘BLACK ACE’ (3) was vetted and found to have an injured offside hock, with the greyhound referred for further veterinary treatment”
9	“Spiritual Love”	14/4/2015	Goulburn	“‘SPIRITUAL LOVE’ (2) was vetted and found to have an injured offside foreleg, with the greyhound referred for further veterinary treatment”
10	“Classy Mistake”	15/4/2015	Richmond	“A veterinary examination of ‘CLASSY MISTAKE’ (2) revealed an injured offside shoulder”
11	“Beetson”	6/5/2015	Richmond	“‘BEETSON’ (6) was vetted and found to have an injured nearside fore leg following a catching pen injury post-race”
12	“Lanee Lace”	19/5/2015	Goulburn	“A veterinary examination of ‘LARNEE LACE’ (1) revealed an injured nearside wrist”
13	“Barcia Bell”	8/8/2015	Richmond	“‘BARCIA BELL’ (3) was vetted and found to have an injured offside hock, with the greyhound referred for further veterinary treatment”

Source: Exhibit FF (17-19 November)

### Deaths on tracks not reported because to do so would ‘stir up the greenies’

- 4.27 Dr Bryant told the Commission that, on at least one occasion when he was working on-track, he asked a steward why the euthanasia of dogs at tracks was not recorded in the stewards’ reports. The steward told him this was because they, GRNSW, “didn’t want to stir up the greenies or give the greenies anything to complain about”.<sup>347</sup>
- 4.28 Dr Bryant told the Commission: “I found that to be hard to accept. I wasn’t happy about it.”<sup>348</sup>
- 4.29 The expression “referred for further veterinary treatment”, as recorded in the stewards’ reports, appears to have been a euphemism for the dog having been put down.

<sup>346</sup> Ex FF – Part 1 (17-19 November 2015).

<sup>347</sup> 18 November 2015: T637.29-30.

<sup>348</sup> 18 November 2015: T637.30-31.

## Significant discrepancies between Dr Bryant's diary and the stewards' reports regarding injuries at tracks

- 4.30 Commission staff reviewed the stewards' reports for the 96 race meetings covered by Dr Bryant's diary and prepared a table of discrepancies between Dr Bryant's diary and the stewards' reports ("the table"). The table became Exhibit FF in the Commission's public hearings.<sup>349</sup>
- 4.31 The table reveals substantial discrepancies between Dr Bryant's diary entries and the stewards' reports for the applicable period. This arises in two important respects. First, there are a significant number of instances where Dr Bryant has recorded an injury in his diary, yet the corresponding stewards' report contains no report of an injury for the dog in question.<sup>350</sup>
- 4.32 Secondly, and as a variant of the first category, there are numerous instances where Dr Bryant recorded an injury in the diary for a particular dog, and the stewards' report in question refers, wrongly, to the dog having been examined by the veterinarian but with *no* injury having been detected. Thus, for example, in respect of the dog named "Crakakeg" in race 3 at Newcastle on 28 February 2015, Dr Bryant recorded in his diary that the dog had a seizure and a sore offside wrist. However, the corresponding stewards' report states: "CRAKAKEG (3) was examined by the club's veterinary surgeon after the event and no injury was found."<sup>351</sup>
- 4.33 In respect of the dog named "Claretown Bert" in race 3 at Goulburn on 7 April 2015, Dr Bryant recorded in his diary that the dog presented with lacerations of its left hock. The corresponding stewards' report states: "A veterinary examination of 'CLARETOWN BERT' (8) revealed No Injury."<sup>352</sup>
- 4.34 In respect of the dog named "Loose Connection" in race 9 at Wentworth Park on 20 April 2015, Dr Bryant recorded in his diary that the dog presented with a cut on the near side of its hind foot. The corresponding stewards' report states: "A veterinary examination of 'LOOSE CONNECTION' (1) – revealed No Injury."<sup>353</sup>
- 4.35 To similar effect, in respect of the dog named "Inmate" in race 6 at Bulli on 3 July 2015, Dr Bryant recorded in his diary "Fell. Sore both quads – bruising", while the corresponding stewards' report states: "A veterinary examination of 'INMATE' (1) – revealed No Injury."<sup>354</sup>
- 4.36 The table also includes numerous instances in which Dr Bryant, on examining the dog, recorded that it presented with sore or tender muscles, and yet the stewards' report makes no mention of such report. For example, in respect of the dog named "Lucy's Awesome" in race 1 at Richmond on 13 June 2015, Dr Bryant recorded in his diary that the dog presented with a sore left shoulder or pectoral muscle and "yelped everywhere". The corresponding stewards' report simply told the public that "LUCY'S AWESOME (3) was examined by the club's veterinary surgeon after the event and no injury was found."<sup>355</sup>

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<sup>349</sup> Ex FF – Part 1 (17-19 November 2015).

<sup>350</sup> There are numerous examples of this phenomenon. See, for example: "Blue Norris" (Gosford, 14 May 2015, race 7); "Kiss Me Marlow" (Newcastle, 15 May 2015, race 8); "Come Back Rosie" (Goulburn, 19 May 2015, race 9); "Overstcked" (Goulburn, 26 May 2015, race 9); "Ibrox Blackjack" (Richmond, 30 May 2015, race 9); "Abbreviate" (Nowra, 6 July 2015, race 7); "Lou Lou Thunder" (Richmond, 8 July 2015, race 8); "Bell's Icon" (Dapto, 16 July 2015, race 2); "Lady Million" (Dapto, 30 July 2015, race 1); "Black Lagoon" (Dapto, 30 July 2015, race 7).

<sup>351</sup> Ex FF – Part 1 (17-19 November 2015) p. 9.

<sup>352</sup> Ex FF – Part 1 (17-19 November 2015) p. 11.

<sup>353</sup> Ex FF – Part 1 (17-19 November 2015), p. 13.

<sup>354</sup> Ex FF – Part 1 (17-19 November 2015), p. 25.

<sup>355</sup> Ex FF – Part 1 (17-19 November 2015), pp. 22-23.

## GRNSW's management policy – misreporting of injuries and failure to report deaths on tracks

- 4.37 As indicated, the Commission uncovered evidence that GRNSW management had put in place, in April 2013, a policy to misreport injuries as recorded in stewards' reports – by providing sanitised descriptions of injuries suffered by dogs at tracks.
- 4.38 A further aspect of GRNSW's policy was the suppression, from stewards' reports, of information regarding dog fatalities in races and euthanasing of dogs on tracks. This policy was likely in place before April 2013, but was reaffirmed at a management meeting in April 2013. The evidence of Dr Bryant, described above, also supports the existence of the policy.
- 4.39 The evidence as to the impugned policy – both as to misreporting of injuries and failures to report deaths on tracks – arises from both contemporaneous documentary records, in particular email communications within GRNSW in April 2013, and from oral evidence of witnesses that the Commission summonsed at the public hearings.

### Three dogs die at a race meeting at Dapto – 10 April 2013

- 4.40 At least in so far as concerns the misreporting of injuries, a catalyst for the policy that GRNSW adopted in April 2013 was the public outcry following a race meeting at Dapto on Wednesday, 10 April 2013. In that race meeting, three dogs suffered catastrophic injuries and either died or were 'put down' by the on-track veterinarian.
- 4.41 At the pre-race performance qualifying trials at the meeting, a dog named "Shez's Way" broke down on the first turn. The stewards' report for the meeting described Shez's Way as having suffered a "fractured offside hock".<sup>356</sup>
- 4.42 In race 2 at the meeting, a dog named "Sniffles" became unbalanced and fell when approaching the first turn. The stewards' report stated that: "A post-race veterinary examination of 'SNIFFLES' (3) revealed the greyhound had broken its back." Near the end of the report, under the sub-heading "injuries", the report further referred to Sniffles having suffered a "broken back".<sup>357</sup>
- 4.43 In race 8 of the meeting, a dog named "Kool Brock" fell. The stewards' report stated that "A post-race veterinary examination of 'KOOL BROCK' (8) revealed the greyhound had a broken neck." Under the sub-heading "injuries", the report further recorded Kool Brock as having suffered a "broken neck".<sup>358</sup>
- 4.44 Consistent with the practice described above of GRNSW not reporting deaths on track, the stewards' report did not refer to any of the three dogs having died, as they did, at the track. The stewards' report did, however, refer, in explicit terms, to the nature of the injuries suffered by the dogs, namely a "fractured hock", a "broken back" and a "broken neck", respectively.
- 4.45 The Dapto race meeting led to significant controversy and negative media publicity for GRNSW. This is evidenced, at least in part, by an article published in the *Illawarra Mercury* in the week following the race meeting.

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<sup>356</sup> Ex VV (17-18 February 2016), Tab C.

<sup>357</sup> Ex VV (17-18 February 2016), Tab C.

<sup>358</sup> Ex VV (17-18 February 2016), Tab C.

## The *Illawarra Mercury* article – 16 April 2013

- 4.46 On 16 April 2013, the *Illawarra Mercury* newspaper published an article, “Injuries at dog racing probed”, written by Ms Cydonee Mardon.<sup>359</sup>
- 4.47 The article referred to three dogs having died at the Dapto race meeting on 10 April 2013 and that GRNSW had launched an investigation into the matter.<sup>360</sup> The article quoted Ms Inez Hamilton-Smith<sup>361</sup> from the animal welfare group Greyhound Freedom, who was highly critical of the greyhound racing industry. The article included the following passages:

Inez Hamilton-Smith, from anti-dog racing group Greyhound Freedom, said if the general public “knew the truth” about greyhound racing in this country, there would be no industry.

“The three dogs that died at Dapto recently are simply considered to be an acceptable and inherent part of this activity by racing enthusiasts and the industry alike,” Ms Hamilton-Smith said.

“Well, we say that breeding dogs to race and kill them is now not acceptable in this day and age. Risking a dog’s life by racing them so people can win some money is simply not the practice of a civilised society,” she said.

“Get your cheap thrills by betting on a footy match if you must, but why do dogs have to run for their lives? In addition, if the industry dispute the figures we are using, we say, ‘Prove us wrong’. We know you can’t.”<sup>362</sup>

## Contemporaneous documents – email communications within GRNSW: April 2013

- 4.48 Later that same day, 16 April 2013, Mr Michael East (General Manager, Media & Content, GRNSW) received a copy of the *Illawarra Mercury* article by email from GRNSW’s media monitoring agency.<sup>363</sup>
- 4.49 That same day, Mr East circulated the media monitors’ report and the *Illawarra Mercury* article to other management personnel within GRNSW, including Mr Hogan, Mr Bill Fanning (General Manager, Integrity), Mr Bentley, and Mr O’Mara.
- 4.50 Later that same day, Mr East sent an email to Mr Fanning, copying Mr Hogan, Mr Bentley and Mr O’Mara.<sup>364</sup> In his email, Mr East referred to the stewards’ report from the previous night’s race meeting at Bulli. That stewards’ report included reference to injuries such as a dog named “Despicable Ken” having suffered a “fractured offside fore leg” in race 7.<sup>365</sup> In his email, Mr East asked of Mr Fanning:

Isn’t there a new protocol for the mentioning of injuries at races in stewards reports? Has this been communicated with all integrity staff members?<sup>366</sup>

- 4.51 That same day, 16 April 2013, Mr O’Mara responded to Mr East’s email as follows:

Michael

As [per] discussion with Clint following the Dapto incidents the preferred would be:

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<sup>359</sup> Ex VV (17-18 February 2016), Tab D.

<sup>360</sup> Ex VV (17-18 February 2016), Tab E.

<sup>361</sup> Ms Hamilton-Smith gave evidence before the NSW Legislative Council’s 2014 Select Committee on Greyhound Racing in NSW, in which she was critical of GRNSW in not publishing information about deaths of dogs at tracks: Inez Hamilton-Smith, Select Committee Public Hearing 6 February 2014: T22.

<sup>362</sup> Ex VV (17-18 February 2016), Tab D.

<sup>363</sup> Ex VV (17-18 February 2016), Tab I.

<sup>364</sup> Ex VV (17-18 February 2016), Tab F.

<sup>365</sup> Ex VV (17-18 February 2016), Tab F1.

<sup>366</sup> Ex VV (17-18 February 2016), Tab F.

Broken Back – sustained back injury

Broken Hock – sustained injury to xxx hock<sup>367</sup>

4.52 The reference in Mr O’Mara’s email to “the Dapto incidents” is clearly to the race meeting at Dapto on 10 April 2013 and the associated deaths of three greyhounds.

4.53 By email of Thursday, 18 April 2013 at 6:22pm, Mr Fanning responded to Mr East’s email to him of 16 April 2013. The email was copied to Mr Bentley, Mr Hogan and Mr O’Mara. In the email, Mr Fanning said:

Michael

I am assuming that you were referring to the fractured foreleg?

It had been communicated that euthanasia would no [longer] be reported, not the extent of the injury aside from broken necks and backs as at Dapto.

I feel that we will be burying ourselves further by backing off the fact that a hock had broken or an obvious leg fracture occurred. It invites suspicion and made up stories of catastrophic injury from welfare groups if we don’t report that accurately.

Perhaps we can include discussion on the issue on Monday morning.<sup>368</sup>

4.54 Mr Fanning’s reference to “the fractured foreleg” appears to be a reference to the report in the stewards’ report from the Bulli meeting on 15 April 2013 of the injury suffered by “Despicable Ken”.

4.55 In his email, Mr Fanning also flagged an opportunity to discuss the issue arising on the following Monday, 22 April 2013.

4.56 Later that same day, 18 April 2013, at 6:33pm, Mr O’Mara sent an email to Mr Fanning, again copying Messrs East, Bentley and Hogan. Mr O’Mara quoted, and criticised, comments by Greyhound Freedom in connection with the Dapto meeting on 10 April 2013 and deaths and injuries suffered on tracks. In his email, Mr O’Mara said:

Bill

See below what has been gathered as FACT by the welfare groups ... the 336 fractures they already count as DEAD.

The question from a community view is if you say broken neck or broken back what is the visualisation ??? I would suggest not a very positive image ?

We are pushing s[hit] uphill with 8,000 injuries ... on top of that we have our participants claiming tracks are unsafe ... all adding fuel to the fire.<sup>369</sup>

4.57 On Friday, 19 April 2013 Mr Hogan circulated, by email, the agenda for next meeting of the leadership group (“LG”). The leadership group was, in effect, the senior management within GRNSW. In his covering email, Mr Hogan identified the first two matters for consideration by the leadership group as:

- Injury reporting protocols for Stewards Reports (BF/ME)
- Dapto Investigation Update (TO).<sup>370</sup>

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<sup>367</sup> Ex VV (17-18 February 2016), Tab F.

<sup>368</sup> Ex VV (17-18 February 2016), Tab F.

<sup>369</sup> Ex VV (17-18 February 2016), Tab H.

<sup>370</sup> Ex VV (17-18 February 2016), Tab G.

4.58 The reference to “BF”, “ME” and “TO” are to Bill Fanning, Michael East and Tony O’Mara, respectively. In each instance, they were the persons who could be expected to lead the discussion of a particular topic on the agenda for the meeting.

4.59 On Tuesday, 30 April 2013, the Chief Steward Mr Bentley sent an email to all stewards. The subject heading of the email was “Reporting of Injuries in Stewards Reports”. In his email, Mr Bentley told his stewards:

Hi All,

As you would all be aware we have copped some pretty bad publicity recently with regard to injuries suffered by greyhounds at race meetings. It has been discussed at a recent management meeting and decided that it is in the best interests of all that we desist from providing too detailed information in our Stewards Reports with regard to injuries sustained by greyhounds. In order to do this we suggest that you no longer report injuries such as fractures or breaks but rather just as injured ie if a greyhound was to sustain a fractured hock we would report it as an injured hock. For those of you on-course we ask that you continue to provide accurate references to the injury on Incapacitations Form even if no period is recommended or required if the greyhound is deceased.<sup>371</sup>

### The evidence of the GRNSW witnesses regarding the GRNSW policy

4.60 As noted, the Commission summonsed relevant present and former GRNSW officers to give evidence in connection with the management policy and the misreporting of injuries in stewards’ reports.

#### *Mr O’Mara*

4.61 Mr Tony O’Mara was employed as a senior manager at GRNSW from mid-2009 to 15 May 2015. In April 2013, he held the title of General Manager, Growth & Sustainability, Welfare & Veterinary Services Unit.<sup>372</sup>

4.62 Mr O’Mara gave evidence that the race meeting at Dapto on 10 April 2013 had caused controversy because three dogs had died at the track.<sup>373</sup>

4.63 When questioned by Counsel Assisting, Mr O’Mara initially sought to defend the references in his email of 16 April 2013 to Mr East – ie. that the preferred description of “Broken Back” should be “sustained back injury” and “Broken Hock” should be “sustained injury to xxx hock” (see at [4.51] above). Mr O’Mara suggested he was simply looking for consistency in reporting of injuries.<sup>374</sup> When pressed, however, Mr O’Mara conceded that it was clearly an understatement to describe a broken back as a “sustained back injury”.<sup>375</sup>

4.64 Mr O’Mara also agreed that he was, in April 2013, concerned about the image that might be visualised by describing an injury, in a stewards’ report, as a “broken back”. He did not want members of the public to think in terms of a broken neck and a dog dying in horrible circumstances on the track, if GRNSW could get away with instead saying “sustained back injury”.<sup>376</sup>

4.65 In his evidence, Mr O’Mara accepted that punters read stewards’ reports and would be quite interested to know what happened to a particular dog at a race, for example, whether it had

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<sup>371</sup> Ex VV (17-18 February 2016), Tab J.

<sup>372</sup> By May 2015, Mr O’Mara’s title at GRNSW was General Manager, Education & Welfare: Ex WW (17-19 November 2015) p. 4; Anthony O’Mara, 17 February 2016: T788.30.

<sup>373</sup> Ex WW (17-18 February 2016), pp. 34-35.

<sup>374</sup> Ex WW (17-18 February 2016), pp. 37-38.

<sup>375</sup> Ex WW (17-18 February 2016), p. 38.

<sup>376</sup> Ex WW (17-18 February 2016), p. 46.

sustained an injury such as a broken hock. When pressed, Mr O'Mara agreed that, if a broken hock was reported simply as 'sustained injury to right hock', punters could be significantly misled.<sup>377</sup>

- 4.66 Mr O'Mara accepted that a reason behind GRNSW management's development of the policy of describing injuries in such (sanitised) fashion was so that animal welfare groups, such as Greyhound Freedom – quoted in the *Illawarra Mercury* article – did not have ready information by which they could complain about the cruelty, in terms of the gravity of injuries that dogs suffered, involved in greyhound racing.<sup>378</sup>
- 4.67 Mr O'Mara agreed that, to get animal welfare organisations off its back, GRNSW was prepared to mislead punters.<sup>379</sup>
- 4.68 Mr O'Mara explained that, in April 2013, the leadership group (or 'LG') at GRNSW – in effect, the senior management of GRNSW - included Mr Hogan, Mr Fanning, Mr Bentley, Mr East and himself.<sup>380</sup>
- 4.69 Mr O'Mara's evidence was that he could not recall the full nature of what was agreed by GRNSW's leadership group at a particular meeting on 19 April 2013. He accepted, however, that the GRNSW leadership group – of which he was a member – did agree among themselves at some point, and likely to be at a meeting on 19 April 2013, that euthanasia would not be reported in the stewards' reports and that injuries would be described in a particular (sanitised) way.<sup>381</sup>
- 4.70 Mr O'Mara agreed that GRNSW had not been transparent in terms of publishing euthanasia and injury figures to the general public.<sup>382</sup>
- 4.71 Mr O'Mara also gave evidence that Mr Bentley's email of 30 April 2013 to all stewards (reproduced at [4.59] above) reflected the policy adopted by GRNSW's leadership group, which Mr O'Mara placed as likely having taken place at a meeting on 19 April 2013.<sup>383</sup> As noted, Mr Bentley's email instructed stewards to "desist from providing too detailed information" in stewards' reports with regard to injuries sustained by greyhounds, and that fractures and breaks should no longer be reported as such, but rather a fractured hock should simply be reported as an "injured hock".

#### **Mr Hogan**

- 4.72 As noted, Mr Brent Hogan was Chief Executive of GRNSW from 2009 to February 2015.
- 4.73 Mr Hogan told the Commission that, while Chief Executive, he did not take steps to ensure that data was not revealed to the public regarding the extent of injuries and deaths of dogs on tracks.<sup>384</sup> He said he recalled a discussion at some point, at a leadership group meeting, about the purpose of stewards' reports.<sup>385</sup>

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<sup>377</sup> Ex WW (17-18 February 2016), p. 40.

<sup>378</sup> Ex WW (17-18 February 2016), pp. 41-42.

<sup>379</sup> Ex WW (17-18 February 2016), p. 42.

<sup>380</sup> Ex WW (17-18 February 2016), p. 42.

<sup>381</sup> Ex WW (17-18 February 2016), p. 44.

<sup>382</sup> Ex WW (17-18 February 2016), p. 34.

<sup>383</sup> Ex WW (17-18 February 2016), p. 47.

<sup>384</sup> 17 February 2016: T769.30-33.

<sup>385</sup> 17 February 2016: T769.39-770.31.

- 4.74 Mr Hogan agreed that the issue of how injuries should be reported – such as a ‘broken hock’ being described as an ‘injured hock’ – was likely to have been discussed at the meeting of the leadership group, the agenda for which Mr Hogan had circulated by email of 19 April 2013.<sup>386</sup>
- 4.75 In his evidence, Mr Hogan said that describing a ‘broken hock’ as an ‘injured hock’ was merely a “simplification of language around injuries”.<sup>387</sup> To similar effect, Mr Hogan said that: “It was a matter of simplifying things into a much more easier (sic) consumable language than what was previously being put out there.”<sup>388</sup> Mr Hogan similarly resisted the notion that the true extent of injuries was to be misrepresented so as not to excite animal welfare organisations. Mr Hogan said “No. I think it was about simplifying the reporting and what level of detail was appropriate for the stewards’ reports.”<sup>389</sup>
- 4.76 Mr Hogan accepted that the deaths at the track at Dapto on 10 April 2013 led to negative media publicity, including the article published by the *Illawarra Mercury* on 16 April 2013, which cited concerns raised by the animal welfare group Greyhound Freedom (see at [4.46] above).
- 4.77 When asked, before the Commission, about whether the leadership group made a decision to describe injuries in euphemistic terms for commercial or political reasons (such as a ‘broken back’ should be reported only as ‘sustained a back injury’) Mr Hogan said there was a discussion about what level of detail was appropriate to be reported in a stewards’ report in terms of the description of injuries.<sup>390</sup> When further pressed as to whether there was a deliberate policy of euphemistically describing injuries so as not to excite the interest of animal welfare groups, Mr Hogan accepted that this “clearly could have been a factor in the deliberations of some around the table”, although he said it was not an issue he had exposure to on a daily basis.<sup>391</sup>
- 4.78 Mr Hogan agreed that it was “entirely possible” that the trigger that led to discussions as to the (sanitised) reporting of injuries was the incidents that occurred on Dapto track on 10 April 2013.<sup>392</sup>
- 4.79 When further pressed as to whether, looking back on the matter now, he agreed that GRNSW’s policy of (sanitised) descriptions of injuries was used by GRNSW to mislead the public, Mr Hogan said: “On reflection I can see how that conclusion is reached, yes.”<sup>393</sup>
- 4.80 Mr Hogan agreed that there was a policy adopted by GRNSW, at some point, not to report deaths on tracks in stewards’ reports. Mr Hogan said that the reason for the policy related to the purpose of stewards’ report and “there was a view that that was not necessarily the type of publicity [ie. about deaths on tracks] that was required.”<sup>394</sup>

### **Mr Bentley**

- 4.81 Mr Clint Bentley held the position of Chief Steward at GRNSW from 2009 until 22 February 2016. In April 2013, Mr Bentley reported to Mr Fanning.
- 4.82 As noted, Mr Bentley gave evidence to the Commission (while still in the position of GRNSW’s Chief Steward) that a stewards’ report is a document targeted to the wagering public. He said it

<sup>386</sup> Ex VV (17-18 February 2016), Tab G.

<sup>387</sup> 17 February 2016: T773.12; T782.42.

<sup>388</sup> 17 February 2016: T783.6-7.

<sup>389</sup> 17 February 2016: T779.14-15.

<sup>390</sup> 17 February 2016: T771.20-21.

<sup>391</sup> 17 February 2016: T772.7-8; See also T782.29-30: “From my recollection I was not – at that point in time I was not particularly engaged in what I saw as an operational matter by and large.”

<sup>392</sup> 17 February 2016: T772.21.

<sup>393</sup> 17 February 2016: T783.2.

<sup>394</sup> 17 February 2016: T778.41-42.

was designed for persons who wish to bet on greyhound racing and who want to obtain information in relation to races.<sup>395</sup>

4.83 Mr Bentley accepted that other persons within the community, including animal welfare organisations, may also use information in stewards' reports from time to time, to ascertain, for example, the extent of injuries suffered by racing dogs.<sup>396</sup>

4.84 Mr Bentley agreed that, prior to the introduction of a new format for stewards' reports in 2016 (as to which, see [4.103] to [4.106] below), the fact that a greyhound had been euthanased at the track would not be reported in the stewards' reports. Mr Bentley said that this had been decided at a meeting of the leadership group in 2013.<sup>397</sup>

4.85 Mr Bentley said the leadership group met every fortnight and the attendees would normally include Mr Hogan, Mr Darren Simpson (as Chief Operating Officer), and the general managers, Messrs Fanning, East and O'Mara.<sup>398</sup>

4.86 Mr Bentley said his recollection was that, at the management meeting, it was decided not to report euthanasia, and also "to tone down the language in relation to severe injuries."<sup>399</sup> When pressed by Counsel Assisting as to what he meant by "tone down the language", Mr Bentley said:

So what we were advised was that if a greyhound was to have a fractured neck or fractured back or something, it has to be reported as [an] injured back.<sup>400</sup>

4.87 When asked why GRNSW management made such decision, Mr Bentley said "I remember that it was in response to a meeting that occurred at Dapto several days prior and three greyhounds being severely injured".<sup>401</sup>

4.88 Mr Bentley accepted that the motivation behind the change in language was a desire to shield GRNSW from scrutiny by animal welfare organisations and that the practice created a lack of transparency and involved misrepresenting the true position.<sup>402</sup> Mr Bentley relevantly gave the following evidence:

Q: Mr Bentley, wasn't the motivation behind this change of language the desire to shield GRNSW from the scrutiny of the animal welfare groups and the adverse publicity that they were bring on the sport?

A: It's probably fair to say that was the case, yes. Yes.

Q: ... That practice though created immediately, didn't it, a lack of transparency?

A: Yes, it's fair to say it did.

Q: Did you consider that that was appropriate from an integrity point of view?

A. Potentially not, but I was doing as I was instructed at the time.

...

Q: ... Who instructed you to adopt that practice?

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<sup>395</sup> 17 February 2016: T843.38-39.

<sup>396</sup> 17 February 2016: T844.41.

<sup>397</sup> 17 February 2016: T846.39-40.

<sup>398</sup> 17 February 2016: T847.10-14. Mr Bentley also indicated that Katrina Chambers, special projects officer, attended some leadership group meetings.

<sup>399</sup> 17 February 2016: T847.39.

<sup>400</sup> 17 February 2016: T 847.42-43.

<sup>401</sup> 17 February 2016: T847.25-26.

<sup>402</sup> 17 February 2016: T848.27-849.13.

A: I can't recall.

Q: You certainly went on to instruct all the stewards that reported to you, didn't you?

A: Yes, I did.

Q: You instructed them to misrepresent the position?

A: I did, yes.

Q: You did that as the Chief Integrity Officer for greyhound racing in New South Wales?

A: Yes, I did.<sup>403</sup>

4.89 Mr Bentley said he could not recall the precise discussions at the management meeting, and whether the decision had been issued as a direction,<sup>404</sup> or the result of a consensus arising from the meeting.<sup>405</sup> He gave further evidence, however, that, to the best of his recollection, the decision was probably a consensus among those at the meeting that this was the way to go.<sup>406</sup>

4.90 Counsel Assisting took Mr Bentley to his email of 30 April 2013 that he sent to all stewards (reproduced at [4.59] above).<sup>407</sup> Mr Bentley said the reference in his email to it having been "decided that it is in the best interests of all" (to desist from providing too detailed information in stewards' reports about injuries) was a reference to the *interests of GRNSW*.<sup>408</sup> Mr Bentley said that "the first line [of his email] says it all" and that the management decision was made "in relation to the bad publicity".<sup>409</sup>

4.91 Mr Bentley also said that GRNSW's practices – of misreporting injuries – was known to all members of the leadership group and was common knowledge amongst all stewards. He further said: "I think a large majority of the organisation would have known."<sup>410</sup>

### **GRNSW management policy continued until the Commission uncovered it**

4.92 In his opening submissions in August 2015, Counsel Assisting stated that many organisations had raised concerns that controlling bodies had failed to keep and publish comprehensive injury reports and statistics.<sup>411</sup> Mr Bentley accepted that, even after August 2015, GRNSW continued the practice of misreporting injuries in stewards' reports, right up until it was discovered (by the Commission) in November 2015.<sup>412</sup>

4.93 Mr Bentley said he did not make Mr Newson – the Interim Chief Executive from February 2016 – aware of the practice (of misreporting injuries). Mr Bentley said: "[It never occurred to me do so."<sup>413</sup>

### **Dr Elizabeth Arnott**

4.94 Dr Elizabeth Arnott has been the Chief Veterinary Officer at GRNSW from 17 August 2015 to date. She heads up what is now called the Greyhound Welfare and Veterinary Services Unit within GRNSW.

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<sup>403</sup> Ibid.

<sup>404</sup> Presumably a reference to a potential direction by the Chief Executive, Mr Hogan.

<sup>405</sup> 17 February 2016: T847.18.

<sup>406</sup> 17 February 2016: T851.5.

<sup>407</sup> Ex VV (17-February 2016), Tab J.

<sup>408</sup> 17 February 2016: T851.9.

<sup>409</sup> 17 February 2016: T851.13. To similar effect, Mr Bentley agreed that GRNSW had effectively gone into damage control in relation to the issue: T851.37-40.

<sup>410</sup> 17 February 2016: T852.27-28.

<sup>411</sup> Stephen Rushton SC, Opening Address 28 September 2015: T38.24-25.

<sup>412</sup> 17 February 2016: T852.11-13.

<sup>413</sup> 17 February 2016: T852.38

- 4.95 Dr Arnott gave evidence to the Commission that her inquiries, with the former Chief Steward Mr Bentley, indicated that GRNSW management had previously given a directive to stewards not to record, in stewards' reports, the euthanasing of greyhounds on tracks.<sup>414</sup>
- 4.96 Dr Arnott agreed that information on the death of greyhounds at race tracks was vitally relevant to the public, welfare organisations and Government. She gave evidence that GRNSW's practice of not reporting such information was "indefensible".<sup>415</sup> Dr Arnott also recognised that it was "certainly a possibility" that GRNSW had deliberately concealed the figures on deaths of greyhounds at race tracks.<sup>416</sup>
- 4.97 Dr Arnott also gave evidence that the OzChase database records, relating to injuries on tracks, are "grossly inadequate."<sup>417</sup>
- 4.98 In her evidence before the Commission, Dr Arnott acknowledged that, if the greyhound racing industry is to have a continuing social licence to operate, it is crucial that information on euthanasia and injuries at tracks be made available to Government, the community and welfare organisations.<sup>418</sup> She said the new administration within GRNSW intended to take steps to rectify the situation.<sup>419</sup>

### **Mr Newson**

- 4.99 Mr Paul Newson has been the Interim Chief Executive of GRNSW from February 2015 to date.
- 4.100 Mr Newson accepted that GRNSW had failed to disclose publicly the euthanasia and fatalities of greyhounds at tracks, and that his practice had continued during the time of his appointment. He said he became aware of GRNSW's non-disclosure of such information only a week or so before he gave evidence to the Commission on 19 November 2015.<sup>420</sup>
- 4.101 Mr Newson said "it's unacceptable that we are not disclosing euthanasia or fatalities" (of greyhounds at racetracks).<sup>421</sup> He said the information should have been disclosed to the public, and that such information "must be reported from a transparency and accountable (sic) point of view".<sup>422</sup>
- 4.102 As to the reason why GRNSW had failed to disclose to the public information on euthanasia and fatalities on tracks, Mr Newson said: "They did not want to put inflammatory – what would be seen as inflammatory information into the public domain."<sup>423</sup> This is consistent with Dr Bryant's evidence that, as a steward told him, GRNSW did not want to "stir up the greenies".

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<sup>414</sup> 19 November 2015: T711.30-31.

<sup>415</sup> 19 November 2015: T717.41.

<sup>416</sup> 19 November 2015: T718.1-2.

<sup>417</sup> 19 November 2015: T706.27.

<sup>418</sup> 19 November 2015: T716.19.

<sup>419</sup> 19 November 2015: T716.14.

<sup>420</sup> 19 November 2015: T746.14.

<sup>421</sup> 19 November 2015: T747.31-32. See also T746.31-32 at which Mr Newson similarly stated that: "the non-disclosure of fatalities or euthanasia are not acceptable."

<sup>422</sup> 19 November 2015: T747.2-3. Mr Newson further indicated that he was (then) still to consider whether the disclosure of such information to the public should be by way of stewards' reports or some other medium.

<sup>423</sup> 19 November 2015: T749.32-33.

## New form of stewards' reports adopted in 2016

- 4.103 Following the Commission's uncovering of GRNSW's practice of misreporting injuries and failing to report deaths of dogs on tracks, GRNSW has, in 2016, adopted a new form of stewards' report.<sup>424</sup>
- 4.104 According to Mr Bentley, the format of the new stewards' report is intended to make clear that there has to be full reporting in relation to injuries and deaths at tracks.<sup>425</sup> The form includes, for each race, boxes that can be completed for deaths on track and injuries. In respect of the latter, a list of greyhound injury terminology is included in the electronic format for the document (for internal purposes only). It includes various fractures, as well as numerous other injury descriptions.<sup>426</sup> The document also includes a note designed to record that: "The euthanasia, fatalities, injuries and incapacitation information in this report was reviewed by the Veterinary Surgeon present at the meeting and confirmed as accurate at [time] on [date]."
- 4.105 GRNSW has also signalled steps to be taken, by way of automated stewards' reporting, to improve the accuracy of information reported by on-track veterinarians.<sup>427</sup>
- 4.106 The new form of stewards' reports, and injury reporting by on-track veterinarians, is considered further in Chapter 17.

## Summary of findings

- 4.107 The Commission finds that GRNSW adopted, and implemented, a two-pronged policy relating to deaths at tracks and the reporting of injuries sustained on-track. Both aspects of the policy were wholly inappropriate.

### Policy not to report deaths on track

- 4.108 As to the death on tracks, the GRNSW policy was, until very recently, that such information was not to be included in the stewards' reports. This was a calculated stance on the part of GRNSW. It was intended to prevent the public – including persons who may be critical of GRNSW and the greyhound racing industry, such as animal welfare organisations – from obtaining information about the number and frequency of deaths of greyhounds on NSW race tracks.
- 4.109 The policy about not reporting euthanasia existed before, but was reaffirmed at a GRNSW management meeting, in April 2013. The existence of the policy is evidenced by Mr Fanning's email of 18 April 2013 to Mr East (see at [4.53] above) in which he confirms that "It had been communicated that euthanasia would no longer be reported ...". The policy is evidenced also by the oral evidence of Mr O'Mara that the management meeting, likely held on 19 April 2013, included agreement that euthanasia would not be reported in stewards' reports (see at [4.69] above). Mr Bentley gave evidence to similar effect (see at [4.48] above). Mr Hogan agreed that GRNSW had adopted a policy, at some point, not to report deaths on tracks in stewards' reports (see at [4.80] above).
- 4.110 The policy is evidenced also by the evidence of Dr Bryant. He was an impressive witness, who gave evidence in a careful and considered manner. The Commission accepts his evidence. Dr Bryant told the Commission that, upon noticing that stewards' reports failed to include details of

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<sup>424</sup> Clint Bentley, 17 February 2016: T845.12.

<sup>425</sup> 17 February 2016, T845.32.34. Note also the GRNSW media release dated 22 January 2016 referring to the findings of a review by Sector Seven Consultancy Pty Ltd into the stewards' reporting framework.

<sup>426</sup> Exhibit XX (17-18 February 2016).

<sup>427</sup> Exhibit YY (17-18 February 2016).

the euthanasia of dogs at tracks at which he had worked, he raised the matter with a steward. Dr Bryant was told that such information was not included in stewards' reports because to do so would "stir up the greenies".

- 4.111 The existence of the policy is evidenced also by a comparison of Dr Bryant's diary and the corresponding stewards' reports. Thirteen dogs were put down or died on track at meetings that Dr Bryant attended, as on-track vet, from 10 January 2015 to 8 August 2015. None of these deaths were reported in the corresponding stewards' reports. In a number of cases, the stewards' report euphemistically referred to the respective dog having been "referred for further veterinary treatment" (see the table at [4.26] above).<sup>428</sup>

### **Policy to misreport injuries on track**

- 4.112 As to the misreporting of injuries, the Commission finds that, in April 2013, GRNSW management adopted a policy of 'sanitising', and misreporting, the description of injuries recorded in stewards' reports.
- 4.113 The existence of the policy is evidenced by contemporaneous documents, including the email of 16 April 2013 from Mr O'Mara to Mr East, which included reference to preferred descriptors for "Broken Back" being "sustained back injury" and "Broken Hock" being "sustained injury to xxx hock" (see at [4.51] above).
- 4.114 The policy is evidenced also by, in particular, the email that the then Chief Steward, Mr Bentley, sent to all stewards on 30 April 2013. That email stated, in unambiguous terms, that it had been decided at a recent management meet that stewards should "desist from providing too detailed information in our Stewards Reports with regard to injuries sustained by greyhounds" and that, to this end, stewards should "no longer report injuries such as fractures or breaks but rather just as injured ie if a greyhound was to sustain a fractured hock we would report it as an injured hock."
- 4.115 The Commission has no doubt that the reason GRNSW management adopted the policy of misreporting injuries was to avoid criticism of the industry in NSW, particularly by animal welfare groups. The catalyst for the introduction of the policy was the criticism and negative publicity that GRNSW faced arising from the deaths of three dogs at the Dapto race meeting on 10 April 2013. The email of Mr Bentley to his stewards on 30 April 2013, which linked the introduction of the policy to the recent bad publicity with regard to injuries at race meetings, reflects the true motivation for the change in policy.
- 4.116 The Commission does not accept that a motivating factor in the change in policy was a need for consistency of reporting of injuries (as suggested by Mr O'Mara) or that the change involved merely a simplification of language around injuries (as suggested by Mr Hogan).
- 4.117 The Commission finds that GRNSW's policy of misreporting of injuries, was calculated, and intended, to mislead the general public.
- 4.118 Further, as Mr O'Mara conceded, to get animal welfare organisations off its back, GRNSW was prepared to engage in conduct that had the effect of misleading punters.

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<sup>428</sup> It is of interest to note similarities with the position that has prevailed in Queensland. The report of Commissioner Alan MacSporran QC, "Final Report of the Queensland Greyhound Racing Industry Commission of Inquiry" (2015) ("the MacSporran Report") identified a practice, in Queensland, of stewards recording greyhound fatalities at race meetings simply as "stood down for 3 months" in steward's reports, rather than as euthanasia. The MacSporran Report also recorded a former Chief Steward as indicating the reason for such (false) reporting was there had been some issues with animal welfare advocates about the death of greyhounds owing to racing. See: MacSporran Report, [584]-[585], [773].

- 4.119 Punters play an important role in the greyhound racing industry, including in connection with the funding allocations that GRNSW receives from Tabcorp Holdings Limited and from betting service providers for use of race field information.<sup>429</sup> Without punters, and the associated betting revenue, there would be no greyhound racing industry, as it presently exists. There is no doubt that many punters, who are prepared to wager money on the outcome of greyhound racing, are keenly interested in the form of particular dogs. Stewards' reports, as published by GRNSW on its website, provide information that punters access. The Commission has no doubt that, at all relevant times, GRNSW has been aware this is so.
- 4.120 From a punter's perspective, it is clearly relevant to know that a dog that did not perform up to expectations in a race had, in fact, been injured. For a punter, the primary source of such information is the stewards' reports that GRNSW publishes and which include certain information on injuries for some dogs.
- 4.121 The Commission's investigations revealed that GRNSW engaged in a deliberate process of underreporting of injuries in its stewards' reports. As noted, this was done so as not to inflame criticisms by animal welfare organisations and other bodies. GRNSW 'massaged' the descriptions of the injuries suffered by dogs so that they would not appear as severe as they in fact were.
- 4.122 From a punter's perspective, the combination of the above practices that GRNSW engaged in meant that relevant information on the injuries of greyhounds that could be expected to be present in stewards' reports was not included. As Mr Bentley explained in evidence, the stewards' report is a document targeted to the wagering public. It is for that reason that the stewards' reports are available on GRNSW's website along with other racing information. It gives the punter information that is relevant in assessing the chance of a dog competing in a future race and explaining in many cases why it failed to perform as expected. Knowing that a dog suffered injury and the extent of that injury may often be as important to the punter as knowing whether the dog began slowly, ran wide, suffered interference, failed to chase or attempted to savage another runner.

### **Conduct inconsistent with continuing social licence to operate**

- 4.123 The conduct of GRNSW – in failing to report deaths at tracks and in misreporting the extent of injuries suffered by greyhounds at race tracks – is inconsistent with GRNSW having a continuing social licence to operate.
- 4.124 There was a failure of transparency on the part of GRNSW. Even more troubling, GRNSW engaged in a deception of the public. Information was withheld from the public, both as to the extent of deaths at tracks and the severity of injuries suffered by greyhounds at race meetings. As to the latter, GRNSW permitted what was, in effect, false or misleading information to be made publicly available.
- 4.125 A disturbing aspect of the practice is that it continued in place notwithstanding the establishment of the Commission and its investigations in connection with GRNSW and the greyhound racing industry in NSW. The practice also continued notwithstanding the removal of the GRNSW Board, following the *Four Corners* program in February 2015, and the appointment of Mr Newson as Interim Chief Executive of GRNSW. The Commission accepts that Mr Newson and Dr Arnott were not made aware of the practice until shortly before each gave evidence before the Commission on 19 November 2015.
- 4.126 GRNSW, through Mr Newson, has taken steps to address the failures of GRNSW the subject of this chapter.

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<sup>429</sup> Betting and Racing Act 1998 No 114 (NSW) s. 33, s. 33A; Betting and Racing Regulation 2012 (NSW) cl. 16.

## **Processes for collection of information from on-track veterinarians**

- 4.127 The processes that GRNSW utilised for the collation of information about information from on-track veterinarians to stewards for inclusion in stewards' reports, was flawed. It was apt to, and did, result in the omission from stewards' reports of important information on greyhound injuries. This is illustrated by the significant discrepancies between Dr Bryant's diary and the corresponding stewards' reports for the period 10 January 2015 to 8 August 2015. The Commission accepts the general accuracy of the matters recorded by Dr Bryant in his diary. The Commission notes that GRNSW is taking steps to address the deficiencies identified in its process for collection of information from on-track veterinarians about injuries.



# 5 Governance: industry history, existing clubs and tracks

## Greyhound racing worldwide

- 5.1 Australia is one of only a small number of countries worldwide where a commercial greyhound racing industry exists. Greyhound racing does not exist on a commercial basis in many jurisdictions, or it has been banned, as it was in South Africa in 1949.<sup>430</sup>
- 5.2 Greyhound racing has also been banned in the vast majority of states in the United States of America (“USA”). In May 2016, Grey2K USA – a non-profit organisation which describes itself as the “largest greyhound protection organization in the world” – reported that only 18 dog tracks in five states remain in the USA.<sup>431</sup> The five states in the USA where greyhound racing currently takes place are: Alabama, Arkansas, Florida, Iowa, and West Virginia. The Commission notes that Arizona was the most recent State in the USA to ban greyhound racing, after legislation was unanimously approved by the Legislature in May 2016 to prohibit racing effective from 1 January 2017.<sup>432</sup>
- 5.3 The Commission is aware that the following countries host a commercial greyhound racing industry:
- Australia;<sup>433</sup>
  - Mexico;<sup>434</sup>
  - Macau (Special Administrative Region of the People’s Republic of China);<sup>435</sup>
  - New Zealand;<sup>436</sup>
  - Republic of Ireland;<sup>437</sup>
  - United Kingdom (England, Scotland and Wales);<sup>438</sup>
  - USA (limited to five states only);<sup>439</sup> and

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<sup>430</sup> National Council of SPCAs South Africa (“NSPCA”) website, “Dog racing – gambling with the lives of dogs”: <[http://www.nspca.co.za/clientdata/10072/uploads/servamus\\_january\\_2015.pdf](http://www.nspca.co.za/clientdata/10072/uploads/servamus_january_2015.pdf)> (accessed 2 May 2016).

<sup>431</sup> Grey2K USA website, “Fact Sheet: Greyhound Racing in the United States”: <<http://www.grey2kusa.org/pdf/GREY2KUSANationalFactSheet.pdf>> (accessed 2 May 2016).

<sup>432</sup> Office of the Arizona Governor website, Press Release “Governor Doug Ducey signs legislation to end live dog racing in Arizona”, 13 May 2016, *Newsroom of the Office of the Arizona Governor Doug Ducey*: <<http://azgovernor.gov/governor/news/2016/05/governor-doug-ducey-signs-legislation-end-live-dog-racing-arizona>> (accessed 26 May 2016).

<sup>433</sup> Eight jurisdictions in Australia have a commercial industry, each with its own controlling body: Australian Capital Territory; New South Wales; Northern Territory; Queensland; South Australia; Tasmania; Victoria; and Western Australia.

<sup>434</sup> Operated at the Agua Caliente Racetrack in Tijuana, Grey2K USA website, “Take Action – Mexico”: <<http://www.grey2kusa.org/action/worldwide/mexico.php>> (accessed 24 May 2016).

<sup>435</sup> Operated at the Macau (Yat Yuen) Canidrome Club, Macau YY Dog website, “Introduction of Membership Department”: <<http://www.macauyydog.com/members/description.php>> (accessed 24 May 2016).

<sup>436</sup> Regulated by Greyhound Racing New Zealand: The Dogs NZ website, “About Us”: <<https://www.thedogs.co.nz/about-nzgra/about-us.aspx>> (accessed 24 May 2016).

<sup>437</sup> Regulated by the Irish Greyhound Board: Irish Greyhound Board website, “Home”: <<http://www.igb.ie/>> (accessed 24 May 2016).

<sup>438</sup> Regulated by the Greyhound Board of Great Britain: Greyhound Board of Great Britain website, “Home”: <<http://www.gbgb.org.uk/about-gbgb.aspx>> (accessed 24 May 2016).

- Vietnam.<sup>440</sup>

- 5.4 The Commission is also aware that greyhound racing takes place in several countries not listed above although the sport does not appear to operate on a commercial basis or as a professional sport in those countries. In other words, it may not be legal to wager on greyhound racing or the industry may not be formally regulated (for example, in Argentina and Chile, where races are organised locally by clubs).<sup>441</sup> In continental Europe, the Czech Republic, Denmark, Finland, Germany and Sweden are each members of the “Continental Greyhound Racing Confederation”.<sup>442</sup> However, those countries do not appear to host commercial, regulated industries on the scale of the countries listed at 5.3 above.
- 5.5 In 2013, Grey2UK USA conducted a global review to determine how many countries host dog racing in some form. The review found that eight countries host commercial industries and a further 21 countries host non-commercial dog racing.<sup>443</sup>

## Industry size and scope in the Australasian context

- 5.6 The greyhound racing industry in NSW represents a considerable proportion of the Australian and New Zealand greyhound racing industry (for the purposes of this report, “Australasia”).
- 5.7 Greyhounds Australasia (“GA”) is a peak industry body made up of representatives from each of the nine greyhound racing controlling bodies in Australia and New Zealand, namely:
- Greyhound Racing New South Wales (“GRNSW”);
  - Greyhound Racing Victoria (“GRV”);
  - Racing and Wagering Western Australia (“RWWA”);
  - Racing Queensland (“RQ”);
  - Tasracing;
  - Greyhound Racing South Australia Ltd (“GRSA”);
  - the Northern Territory Government, Racing Gaming & Licensing;
  - Canberra Greyhound Racing Club (“CGRC”); and
  - Greyhound Racing NZ (“GRNZ”).
- 5.8 The interaction between GRNSW and GA is discussed further in Chapter 7.
- 5.9 Based on annual figures published by GA for FY14 and FY15, the two largest greyhound racing jurisdictions in Australasia are undoubtedly NSW and Victoria. In both of those reporting periods, NSW ranked higher than Victoria in terms of:
- number of race meetings;

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<sup>439</sup> Grey2K USA website, “Fact Sheet: Greyhound Racing in the United States”: <<http://www.grey2kusa.org/pdf/GREY2KUSANationalFactSheet.pdf>> (accessed 24 May 2016).

<sup>440</sup> Regulated by Sports and Entertainment Services Joint Stock Company: see Sports and Entertainment Services Joint Stock Company, “History and Development”: <<http://duachovietnam.net/about/73-history-and-development>> (accessed 24 May 2016).

<sup>441</sup> See Grey2K USA website, “Take Action – Argentina”: <<http://www.grey2kusa.org/action/worldwide/argentina.php>> (accessed 24 May 2016); and Grey2K USA website, “Take Action – Chile”: <<http://www.grey2kusa.org/action/worldwide/chile.php>> (accessed 24 May 2016).

<sup>442</sup> Continental Greyhound Racing Confederation website, “Members”: <<http://www.cgrc.eu/>> (accessed 24 May 2016).

<sup>443</sup> “Commercial” was considered by Grey2K USA: Grey2UK US website, “Take Action: Worldwide”: <<http://www.grey2kusa.org/action/worldwide.html>> (accessed 24 May 2016).

- number of clubs;
- registered trainers and owner/trainers (combined);
- registered attendants;
- greyhounds named; and
- litters registered.<sup>444</sup>

5.10 Conversely, Victoria outnumbered NSW in FY14 and FY15 in terms of:

- number of greyhound starters;
- total stake money paid;
- number of licensed participants (total); and
- registered owners (including syndicates).<sup>445</sup>

5.11 In relation to the number of individual races held, Victoria outnumbered NSW for the first time in FY15, NSW holding more races than Victoria (and every other State or Territory) for every other year since 2003.<sup>446</sup>

5.12 Using GA's FY15 figures – the most complete set of figures available for all GA member jurisdictions – the NSW greyhound racing industry comprised the following share of the Australasian greyhound racing industry in that period:

- 29% of race meetings held (1,253);
- 27% of individual races held (12,422);
- 27% of greyhound starters (94,222);
- 23% of stake money paid (\$23,030,582);
- 43% of greyhound racing clubs (34);
- 46% of greyhounds named (5,645); and
- 39% of greyhound litters registered (1,232).<sup>447</sup>

5.13 Further, NSW is responsible for by far the largest proportion of live greyhounds exported from Australia to overseas markets. In 2015, a total of 624 greyhounds were exported from Australia to other countries. Of these, 498 greyhounds (or 80%) were exported from the load port in Sydney. Victoria supplied the next largest proportion of Australian greyhounds exported to international markets in 2015 (95 greyhounds or 15%).<sup>448</sup>

5.14 The economic and social contributions that the NSW greyhound racing industry makes to the State of NSW are discussed in Chapters 25 to Chapter 28 of this report.

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<sup>444</sup> Greyhounds Australasia ("GA") website, "Australasian Statistics": <<http://www.galtd.org.au/industry/australasian-statistics>> (accessed 26 May 2016).

<sup>445</sup> Ibid.

<sup>446</sup> Ibid.

<sup>447</sup> Ibid. The figures at 5.12 do not include NZ "stake money paid", as those figures were not available as at 7 June 2016.

<sup>448</sup> Attachment C to letter dated 29 April 2016 from Kate Makin, Program Director Live Animal Exports Branch/Exports Division, Department of Agriculture and Water Resources to Cheryl Drummy, Special Counsel for the NSW Crown Solicitor assisting the Commissioner.

## History of greyhound racing clubs in NSW

- 5.15 As noted in Chapter 3, the sport of greyhound racing has a long history in NSW. Prior to the advent of greyhound racing using an artificial lure, coursing had been a popular pastime in NSW for several decades. The first greyhound races took place in May 1927 at Epping Racecourse (later called Harold Park).<sup>449</sup>
- 5.16 Following an unsuccessful challenge to the legality of betting on mechanical hare coursing under the *Gaming and Betting Act 1912* (NSW), betting on mechanical lures was declared legal by his Honour Justice Campbell in the NSW Supreme Court in October 1927.<sup>450</sup> Later that year, the then Government legislated to prohibit betting after sunset on licensed racecourses and coursing grounds.<sup>451</sup> While this had a negative impact on greyhound racing for a short period, in 1930 the newly elected Labor Government legalised gambling at race meetings.<sup>452</sup>
- 5.17 Despite the onset of the Great Depression in 1929, attendance at greyhound race meetings soared in the 1930s, with Harold Park reportedly boasting a “record crowd” for the time of 12,500 in September 1936.<sup>453</sup>
- 5.18 The growing popularity of greyhound racing in NSW in the late 1920s and 1930s brought with it the arrival of greyhound racing clubs. Such clubs have now long formed part of the NSW landscape, particularly in regional and rural areas. In January 2016, the Commission sought information from each of the greyhound racing clubs currently operating in NSW.<sup>454</sup> The information sought covered a range of topics, including club history, Board composition, membership rates, employment and volunteering.
- 5.19 Maitland and Lithgow greyhound racing clubs were formally established in 1927.<sup>455</sup> Wagga Greyhound Racing Club was established in around 1930,<sup>456</sup> while Moree and Tamworth greyhound racing clubs were established in 1932.<sup>457</sup>
- 5.20 It is clear that the history of the State’s greyhound racing club network spans a considerable period of time. Indeed, with the exception of The Gardens Greyhound Club, formally established in 2014,<sup>458</sup> all clubs currently operational in NSW were established prior to 1985, with many established in the 1930s, 1950s and 1960s.<sup>459</sup>

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<sup>449</sup> Ex EEE (17-18 February 2016), p. 7; see also Alan Sharpe, *Pictorial History Blacktown and District* (Kingsclear Books, 2000), p 102; Glebe Society website, “Wentworth Park – its History and Uses”:

<<http://www.glebesociety.org.au/wordpress/?socialhistory=wentworth-park-its-history-and-uses>> (accessed 24 May 2016).

<sup>450</sup> Article, “Betting Legal – Mechanical Hare – Judge’s Decision”, *The Sydney Morning Herald*, 5 October 1927:

<<http://trove.nla.gov.au/newspaper/article/16408947>> (accessed 24 May 2016).

<sup>451</sup> *Gaming and Betting (Night Betting) Amendment Act 1927* (NSW) (Act No. 54, 1927).

<sup>452</sup> Ex EEE (17-18 February 2016), p. 7. See also article, “From Early Uproar, greyhound racing blossomed in Tweed” by D Millar, *Tweed Daily News*, 5 February 2011.

<sup>453</sup> Nick Jackson, “Appendix 1: Historical Background” to *Planning Proposal: Sydney Local Environmental Plan (Harold Park) 2010*, Attachment 7: Harold Park Heritage Study, Paul Davies & Associates, 2 July 2010.

<sup>454</sup> This included ten Orders which were issued to GBOTA to account for the period of time in FY14 during which it held a caretaker role over The Gardens Sporting Complex at Wallsend.

<sup>455</sup> Lithgow Greyhound Racing Club Response to Order 1 dated 28 January 2016; Maitland Greyhound Racing Club Response to Order 1 dated 27 January 2016.

<sup>456</sup> Wagga Greyhound Racing Club Response to Order 1 dated 25 January 2016.

<sup>457</sup> Moree Greyhound Racing Club Response to Order 1 dated 8 February 2016; Tamworth Greyhound Racing Club Response to Order 1 dated 18 January 2016.

<sup>458</sup> The Commission was informed that greyhound racing commenced at this venue in 2005 under the control of the now dissolved National Coursing Association: Newcastle Greyhounds (The Gardens) Response to Order 1 issued by the Commission dated 1 February 2016.

<sup>459</sup> Responses to Orders to NSW greyhound racing clubs (various) issued by the Commission in January 2016.

- 5.21 This history accords with remarks made by GRNSW in its submission to the Commission, in which it stated that, “The evolution and boom in greyhound racing through to the late 1920s and 1930s resulted from catering directly to the sport’s target market – the working class.”<sup>460</sup>
- 5.22 According to a GRNSW Board paper “Racing For Change Discussion Paper”, by 1928 there were in excess of 40 racetracks across NSW staging regular greyhound races.<sup>461</sup> The Board paper detailed how the long history of greyhound racing in NSW has been characterised by a significant shift in how the wagering public has engaged with the industry. Betting on a greyhound race used to require attendance at a race meeting, and later at a TAB outlet, in order to place a bet. Today, however, people can bet or watch a race from their homes or from a pub; they can also watch races remotely from their TVs, computers and mobile phones.<sup>462</sup>
- 5.23 The shift in wagering from on-course to off-course engagement has no doubt contributed to the drastic decline in attendance numbers at greyhound race meetings over the past few decades, a topic discussed in Chapter 28. It may also be partly responsible for the modest membership rates at many clubs in NSW today (discussed below).

## Network of existing clubs and tracks in NSW

- 5.24 There are currently 34 greyhound racing clubs in throughout NSW. Of these, 15 are based at TAB tracks and 19 are based at non-TAB tracks.<sup>463</sup> Nine clubs in NSW are operated by the NSW Greyhound Breeders, Owners and Trainers’ Association Ltd (“GBOTA”) and 25 clubs are operated and governed by independent clubs. Of the nine GBOTA clubs, six are based at TAB tracks.<sup>464</sup> Of the 25 non-GBOTA clubs, nine are based at TAB tracks. Metropolitan greyhound racing, which tends to provide higher prize money and draw more spectators, has traditionally occurred at the GBOTA clubs.<sup>465</sup>
- 5.25 In its Final Report provided to GRNSW in January 2016, “Implementing Reform in the New South Wales Greyhound Racing Industry”, the Joint Working Group (“JWG”) stated that only 14 greyhound racing tracks in NSW are located on land owned by individual clubs. The remainder are leased or located on Trust land.<sup>466</sup>
- 5.26 In addition to the 34 clubs located in NSW, the Canberra Greyhound Racing Club (“the CGRC”) in the ACT is governed by reference to GRNSW rules, policies and functions. Under the *Racing Act 1999* (ACT), the CGRC is the controlling body for greyhound racing in the ACT. It operates one TAB track in the ACT which is located at Symonston, Canberra. The CGRC’s operations are, however, in part regulated by GRNSW. For example, under cl. 43 of CGRC Constitution, participants (including owners, trainers and breeders) and greyhounds in the ACT are required to be registered with GRNSW.<sup>467</sup>
- 5.27 The CGRC also requires that if a greyhound is nominated for any event:

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<sup>460</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [79].

<sup>461</sup> Ex EEE (17-18 February 2016), p. 7.

<sup>462</sup> Ibid.

<sup>463</sup> GRNSW Annual Report 2015, p. 24

<sup>464</sup> GBOTA website, “Racing – Track Information”: <<http://www.gbota.com.au/>> (accessed 26 May 2016).

<sup>465</sup> Ex EEE (17-18 February 2016), p. 11.

<sup>466</sup> Joint Working Group Final Report, p. 44.

<sup>467</sup> Canberra Greyhound Racing Club (“CGRC”) website, “CGRC Constitution”: <<http://www.canberragreyhound.com.au/#!blank/r5qs2>> (accessed 24 May 2016).

- its trainer agrees to be bound by the GRNSW Rules of Racing (“the Rules”) as well as the CGRC Rules;<sup>468</sup> and
- grading is to be in accordance with the GRNSW grading policy.<sup>469</sup>

Further, under the CGRC Constitution, breeders must comply with the GRNSW Code of Practice for Breeding, Rearing and Education.<sup>470</sup>

5.28 Table 5.1 below provides a breakdown of the 34 tracks in NSW based on their TAB or non-TAB status and membership of the GBOTA.

**Table 5.1 GBOTA and non-GBOTA clubs at TAB and non-TAB tracks in NSW**

NSW TAB tracks (15)		NSW Non-TAB tracks (19)	
GBOTA	Non-GBOTA	GBOTA	Non-GBOTA
Bulli	Casino	Appin Way <sup>471</sup>	Armidale
Bathurst	Dapto	Gunnedah	Broken Hill
Gosford	Dubbo	Temora	Coonabarabran
Lismore	Goulburn	<b>Total: 3</b>	Coonamble
Maitland	Grafton		Cowra
Wentworth Park	Richmond		Hastings River (Wauchope)
<b>Total: 6</b>	Shoalhaven (Nowra)		Kempsey (Macleay)
	The Gardens (Newcastle)		Lithgow
	Wagga		Moree
	<b>Total: 9</b>		Mudgee
			Muswellbrook
			Potts Park (GSC)
			Tamworth
			Taree
			Tweed Heads
			Young
			<b>Total: 16</b>

## Club governance and membership

5.29 The GBOTA Board governs the operation of greyhound racing at all nine of its track venues. Its Board comprises a Chairman, a Deputy Chairperson, eight directors and an Executive Officer.<sup>472</sup> The GBOTA describes itself as “a major race meeting operator and an organised advocacy body for members and industry participants.”<sup>473</sup> Membership of the GBOTA is open to any breeder, owner, trainer or attendant who, at the time of application, holds a licence issued by, or is the owner of a greyhound registered with, GRNSW.<sup>474</sup> At present, it is not possible for a member of

<sup>468</sup> CGRC Rules LR 21(2)(d)(i).

<sup>469</sup> CGRC Rules LR 21A(2).

<sup>470</sup> CGRC Rules LR 125(3).

<sup>471</sup> Appin Way is not racing in the 2015-16 racing season and is currently being used as a training track only: GBOTA website, “Racing – Track Information – Appin”: <<http://www.gbota.com.au/track-information/appin>> (accessed 24 May 2016).

<sup>472</sup> GBOTA Annual Report 2015, pp. 14-15.

<sup>473</sup> GBOTA website, “Strategic Review Progress”: <<http://www.gbota.com.au/membership/strategic-review-progress>> (accessed 24 May 2016).

<sup>474</sup> In addition, attendants must have held a licence for at least two years and be over 18 years of age: GBOTA website, “GBOTA Branches”: <<http://www.gbota.com.au/how-to-join/gbota-branches>> (accessed 24 May 2016).

GBOTA to hold a separate membership with a specific GBOTA club or venue; a person is a member of the GBOTA.<sup>475</sup>

- 5.30 In relation to the 25 non-GBOTA clubs in NSW, all bar Coonabarabran Greyhound Racing Club informed the Commission that they are governed by either a Board or a Committee. The average number of Board/Committee members at non-GBOTA clubs is eight.<sup>476</sup> The majority of non-GBOTA clubs hold monthly Board/Committee meetings (excluding recess periods). A few clubs reported that they hold bi-monthly meetings and one club reported that it holds quarterly meetings.<sup>477</sup>
- 5.31 With respect to membership of non-GBOTA clubs, current numbers vary considerably between clubs. Greyhound Social Club recorded the highest membership figure, reporting that it had 1,470 members in FY15.<sup>478</sup> Of the remaining 24 non-GBOTA clubs, for FY15:
- four reported that they had between 100 and 200 members;
  - seven reported that they had between 50 and 100 members;
  - nine reported that they had between 20 and 50 members; and
  - four reported that they had fewer than 20 members.<sup>479</sup>
- 5.32 The smallest clubs, recording fewer than 20 members in FY15, were located at Tweed Heads, Moree, Muswellbrook, Coonabarabran and Armidale.<sup>480</sup>

## Employment and volunteering

- 5.33 Tables 5.2 and 5.3 below contain data obtained directly from clubs relating to employment and volunteering at clubs. Some of the figures provided from the clubs were based on estimates or extrapolated from averages.
- 5.34 In relation to employment, the figures indicate that greyhound racing clubs across NSW provide paid work for less than 600 individuals in total. Specifically:
- as at January 2016, 52 people were employed by greyhound racing clubs on a full-time equivalent (“FTE”) basis; and
  - between July 2014 and January 2016,<sup>481</sup> approximately 511 people were employed by greyhound racing clubs on a part-time (“PT”) or casual basis.<sup>482</sup>
- 5.35 As at early 2016, Wentworth Park Greyhound Racing Club recorded the highest number of FTE employees (seven) and PT/casual employees (41). Fifteen clubs reported that they have no paid FTE employees, and four clubs reported that they have no paid PT/casual employees.

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<sup>475</sup> GBOTA, Responses to Orders 1 to 10 dated 27 January 2016.

<sup>476</sup> This figure was arrived at based on there being 183 Committee/Board members across the 24 clubs which have Committees/Boards ( $183 \div 24 = 7.63$ ).

<sup>477</sup> Based on responses to 25 Orders issued to non-GBOTA Clubs in January 2016.

<sup>478</sup> Greyhound Social Club Response to Order 1 dated 25 January 2016.

<sup>479</sup> Figures based on responses to 25 Orders issued to non-GBOTA Clubs in January 2016.

<sup>480</sup> Tweed Heads Coursing Club Response to Order 1 dated 2 February 2016; Moree Greyhound Racing Club Response to Order 1 dated 8 February 2016; Muswellbrook Mechanical Coursing Club Response to Order 1 dated 21 January 2016; Coonabarabran Greyhound Racing Club Response to Order 1 dated 15 February 2016; Armidale Greyhound Racing Club Response to Order 1 dated 3 February 2016.

<sup>481</sup> The Orders to GBOTA and non-GBOTA clubs asked for current (ie. as at January 2016) P/T and casual employment figures, however, GBOTA provided figures for FY15. Therefore, the current figure for non-GBOTA clubs was added with the FY15 figure for GBOTA clubs to reach the total of 511.

<sup>482</sup> Figures based on responses to 35 Orders issued to GBOTA and non-GBOTA clubs in January 2016.

**Table 5.2 GBOTA FTE employees (current) and PT/casual employees (FY15)**

CLUB (GBOTA)	FT (current)	PT/casual (2014/15)
Wentworth Park	7	41
Bulli	3	27
Gosford	3	43
Lismore	3	31
Bathurst	2	23
Gunnedah	2	0
Maitland	2	33
Temora	2	7
Appin	1	13
TOTAL	25	218

Source: Data obtained from GBOTA Response to Orders 1 to 3 and 5 to 10 dated 27 January 2016.

**Table 5.3 Non-GBOTA FTE employees (current) and PT/casual employees (current)**

CLUB (non-GBOTA)	FT (current)	PT/casual (current)
Greyhound Social Club	6	36
Richmond	5	21
Casino	3	17
The Gardens (Newcastle)	3	18*
Dapto	2	13
Goulburn	2	13
Grafton	2	28
Shoalhaven	2	20
Dubbo	1**	9*
Tweed Heads	1	13
Broken Hill	0	14
Coonamble	0	1**
Cowra	0	12
Hastings River (Wauchope)	0	0
Kempsey (Macleay)	0	9
Lithgow	0	13
Moree	0	6*
Mudgee	0	0
Muswellbrook	0	11
Tamworth	0	2
Taree	0	14
Wagga	0	19
Young	0	4^
Armidale	0	0
Coonabarabran	0	0
TOTAL	27	293

Source: Data obtained from non-GBOTA clubs' Responses to Orders issued in January 2016; and GBOTA Response to Order 4 dated 27 January 2016.

\* Does not include "Work for the Dole" casuals

\*\* Club Secretary

^ Figure for FY15

5.36 A 2014 social impact survey undertaken by IER Pty Ltd ("IER"), a consulting firm, as part of a report "Size and Scope of the NSW Racing Industry" ("IER Report") found that the greyhound

racing industry created 2,781 FTE jobs in FY13.<sup>483</sup> Compared to Tables 5.2 and 5.3 above, IER's figure for FTE employment is significantly higher. However, the IER Report looked at both direct and *indirect* employment generated by the greyhound racing industry. Further, Tables 5.2 and 5.3 above do not account for people employed directly by GRNSW. As at January 2016, GRNSW provided jobs for approximately 79 people and five Board member positions currently remain vacant.<sup>484</sup>

5.37 In relation to the number of people who perform volunteer work at clubs, Tables 5.4 and 5.5 below contain data obtained by the Commission directly from clubs in January 2016.

5.38 Table 5.4 shows that, across the GBOTA club network:

- in FY14, 100 people provided volunteer services; and
- in FY15, 102 people provided volunteer services.

5.39 With respect to non-GBOTA clubs, many of the clubs could only provide estimates of volunteer numbers to the Commission. Acknowledging that some of the figures provided were based on estimates, Table 5.5 shows that:

- in FY14, between 328 and 335 people provided volunteer services at non-GBOTA clubs; and
- in FY15, between 355 and 362 people provided volunteer services at non-GBOTA clubs.

**Table 5.4**      **Volunteers at GBOTA clubs**

CLUB (GBOTA)	2013/14	2014/15
Temora	35	40
Gunnedah	20	20
Bathurst	15	14
Bulli	12	12
Maitland	10	8
Lismore	3	3
Appin	3	3
Wentworth Park	2	2
Gosford	0	n/s
TOTAL	100	102

Source: Data obtained from GBOTA's Response to Orders 1 to 3 and 5 to 10 dated 27 January 2016.  
n/s = not stated

<sup>483</sup> IER Pty Ltd, report for the NSW Office of Liquor, Gaming and Racing "Size and Scope of the NSW Racing Industry" (2014), p. 20.

<sup>484</sup> GRNSW Remuneration Budget and Forecast Log: GRNSW Response to Order 24 dated 19 January 2016.

**Table 5.5 Volunteers at non-GBOTA clubs**

CLUB (non-GBOTA)	2013/14	2014/15
Richmond	40*	70*
Taree	~35	~35
Grafton	30	30
Shoalhaven	22	22
Tamworth	18	21
Young	20*	20
Dubbo	~18-20*	~18-20*
Coonamble	~15-20*	~15-20*
Coonabarabran	~15	~15
Armidale	19	14
Wagga	14	14
Cowra	12	12
Greyhound Social Club	10	11
Kempsey (Macleay)	10	10
Goulburn	7	8
Moree	7*	7*
Mudgee	~13*	~13*
Hastings River (Wauchope)	5	5
Lithgow	5	5
Muswellbrook	4	4
Broken Hill	3	3
Tweed Heads	3**	3**
Casino	0	0
Dapto	0	0
The Gardens (Newcastle)	3 <sup>485</sup>	0
TOTAL	~328-335	~355-362

Source: Data obtained from non-GBOTA clubs' Responses to Orders issued in January 2016; GBOTA Response to Order 4 dated 27 January 2016.

\* Includes unpaid work performed by Board/Committee members

\*\* Includes unpaid work performed under Corrective Services Orders

~ Approximate number

5.40 The data in figures 5.4 and 5.5 can be contrasted with GRNSW's unsourced estimate to the Commission that 5,239 people volunteer their time and services to facilitate the greyhound racing clubs in NSW.<sup>486</sup>

## Map of existing tracks in NSW

5.41 A map showing the location of the existing greyhound racing tracks in NSW, together with the single track located in the ACT, is provided as Appendix L.<sup>487</sup>

<sup>485</sup> GBOTA Response to Order 4 dated 27 January 2016. The Commission notes that GBOTA had a caretaker role over The Gardens during FY14.

<sup>486</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, p. 26.

<sup>487</sup> Map source: Joint Working Group, final report "Implementing reform in the New South Wales greyhound racing industry: Report to the Interim Chief Executive of Greyhound Racing NSW from the Joint Working Group" (29 January 2016), p. 49.

## 6 Governance: GRNSW history, organisational structure and the “Board”

### History and formation

- 6.1 Greyhound Racing New South Wales (“GRNSW”), in its current form, was established by the *Greyhound Racing Act 2009* (NSW) (“the Act”). GRNSW is vested with both commercial functions associated with the promotion of greyhound racing in this State and the regulation of the industry.<sup>488</sup> It is independent of Government.<sup>489</sup>
- 6.2 The concentration of both commercial and regulatory functions in the one body is not new to the greyhound racing industry. Nor is the separation of those functions. How commercial and regulatory functions were to be exercised was addressed by Parliament on a number of occasions between 1985 and 2009.
- 6.3 The *Greyhound Racing Authority Act 1985* (NSW) (formerly the *Greyhound Racing Control Board Act 1985* (NSW)) established a body corporate known as the Greyhound Racing Authority (NSW) (“the GRA”).<sup>490</sup> Pursuant to the *Greyhound Racing Authority Amendment Act 1998* (NSW), the GRA was reconstituted,<sup>491</sup> and the Greyhound Racing Appeals Tribunal was created.<sup>492</sup> The GRA had both regulatory and commercial functions. The Board of the GRA was responsible for exercising the functions of the GRA other than its regulatory functions.<sup>493</sup> The Board was not subject to the control or direction of the Minister.<sup>494</sup> The regulatory functions were exercised by the Regulatory Committee of the GRA.<sup>495</sup> The Regulatory Committee was subject to the control and direction of the Minister except in relation to the contents of a report or recommendation made by it to the Minister or the decision on any appeal or other disciplinary proceedings.<sup>496</sup> The GRA was a statutory body representing the Crown.<sup>497</sup>
- 6.4 In 2002, Parliament legislated again. *The Greyhound Racing Act 2002* (NSW) (“the 2002 Act”) separated the regulatory and commercial functions previously exercised by the GRA. The equivalent outcome was achieved in respect of harness racing with the enactment of the *Harness Racing Act 2002* (NSW), which established Harness Racing New South Wales (“HRNSW”).<sup>498</sup>
- 6.5 The 2002 Act repealed the *Greyhound Racing Authority Act 1985* and created Greyhound Racing New South Wales (GRNSW),<sup>499</sup> together with a reconstituted GRA,<sup>500</sup> and Greyhound Racing Appeals Tribunal.<sup>501</sup>

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<sup>488</sup> *Greyhound Racing Act 2009* (NSW) (“The Act”) s. 9(2).

<sup>489</sup> The Act s. 5.

<sup>490</sup> From 1985 until December 1996, this body corporate was known as the Greyhound Racing Control Board. The name change to the Greyhound Racing Authority (NSW) was enabled by the passing of the *Statute Law (Miscellaneous Provisions) Act (No 2) 1996* (NSW) Sch. 1, cl. 1.6.

<sup>491</sup> *Greyhound Racing Authority Act 1985* (NSW) s. 5.

<sup>492</sup> *Greyhound Racing Authority Act 1985* (NSW) Pt. 4A.

<sup>493</sup> *Greyhound Racing Authority Act 1985* (NSW) s. 7(1).

<sup>494</sup> *Greyhound Racing Authority Act 1985* (NSW) s. 7(3).

<sup>495</sup> *Greyhound Racing Authority Act 1985* (NSW) s. 8B(1).

<sup>496</sup> *Greyhound Racing Authority Act 1985* (NSW) s. 8B(3).

<sup>497</sup> *Greyhound Racing Authority Act 1985* (NSW) s. 5(3).

<sup>498</sup> *Harness Racing Act 2002* (NSW) Pt. 2.

<sup>499</sup> *Greyhound Racing Act 2002* (NSW) (“the 2002 Act”) s. 6(1).

- 6.6 GRNSW was independent of Government<sup>502</sup> and commenced operations in February 2003.<sup>503</sup> With the exception of registration of trial tracks and clubs, and the development and review of policy in relation to breeding and grading,<sup>504</sup> it exercised commercial functions.<sup>505</sup> The GRA exercised the regulatory functions of the industry and was a statutory body representing the Crown.<sup>506</sup> It was subject to the direction and control of the Minister, except in relation to the contents of a report or recommendation it made to the Minister or a decision it made on any appeal or other disciplinary proceedings.<sup>507</sup> The division of responsibilities between the GRA and GRNSW were further refined in a memorandum of understanding.<sup>508</sup>
- 6.7 On 1 October 2004, the GRA and Harness Racing Authority were combined so as to exercise regulatory functions over both codes of racing. *The Greyhound and Harness Racing Administration Act 2004* (NSW) established the Greyhound and Harness Racing Regulatory Authority (“the GHRRA”).<sup>509</sup> It too was subject to the direction and control of the Minister, except in relation to the contents of a report or recommendation made by it to the Minister or its decision on any appeal or other disciplinary proceedings.<sup>510</sup> The GHRRA was a statutory body representing the Crown.<sup>511</sup>
- 6.8 A new tribunal known as the Greyhound and Harness Racing Appeals Tribunal was also constituted.<sup>512</sup>
- 6.9 GRNSW continued to exercise its commercial functions under the 2002 Act and was required to meet with the GHRRA at least twice a year to coordinate the carrying out of their respective functions.<sup>513</sup>
- 6.10 In 2009, the *Racing Legislation Amendment Act 2009* (NSW) repealed the *Greyhound and Harness Racing Administration Act 2004*, the 2002 Act and the *Harness Racing Act 2002*.<sup>514</sup> At the same time, the *Greyhound Racing Act 2009* and the *Harness Racing Act 2009* (NSW) (“the HRA”) came into force. While separating the regulation of greyhound racing from harness racing, these amendments brought together, once again, the commercial and regulatory functions of the racing codes.<sup>515</sup> Section 4(1) of the Act established GRNSW.<sup>516</sup> The regulatory functions of the now dissolved GHRRA were, in effect, subsumed by GRNSW in respect of greyhound racing and by HRNSW in respect of harness racing.
- 6.11 A further effect of the repeal of the *Greyhound and Harness Racing Authority Act 2004* (NSW) was that there was no longer a Greyhound and Harness Racing Appeals Tribunal. The *Racing Legislation Amendment Act 2009* (NSW) made amendments to the *Racing Appeals Tribunal Act*

<sup>500</sup> The 2002 Act Pt. 2 Div. 2.

<sup>501</sup> The 2002 Act Pt. 4.

<sup>502</sup> The 2002 Act s.7.

<sup>503</sup> GRNSW Annual Report 2004, p. 25.

<sup>504</sup> See the 2002 Act s. 9(2)(e). Its functions also included to “initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the greyhound racing industry”: see the 2002 Act s. 9(2)(b).

<sup>505</sup> The 2002 Act s. 9.

<sup>506</sup> The 2002 Act s. 13(3).

<sup>507</sup> The 2002 Act s. 13(2).

<sup>508</sup> GRA Annual Report 2003, p. 18.

<sup>509</sup> *Greyhound and Harness Racing Administration Act 2004* (NSW) s. 4(1).

<sup>510</sup> *Greyhound and Harness Racing Administration Act 2004* (NSW) s. 4(2).

<sup>511</sup> *Greyhound and Harness Racing Administration Act 2004* (NSW) s. 4(3).

<sup>512</sup> *Greyhound and Harness Racing Administration Act 2004* (NSW) s. 26.

<sup>513</sup> *Greyhound and Harness Racing Administration Act 2004* (NSW) s. 33(1).

<sup>514</sup> *Racing Legislation Amendment Act 2009* (NSW) s. 3.

<sup>515</sup> The Act s. 9, s. 10; *Harness Racing Act 2009* (NSW) s. 9, s. 10.

<sup>516</sup> Under clause 3 of Schedule 3 of the Act, GRNSW (established by s. 6(1) of the Act) is taken for all purposes to be a continuation of, and the same legal entity, as GRNSW constituted under the *Greyhound Racing Act 2002* (NSW).

1983 (NSW), which created rights of appeal from certain decisions made under the Act and the HRA to the Racing Appeals Tribunal.<sup>517</sup>

- 6.12 GRNSW was to be independent of Government.<sup>518</sup> It was required to appoint a person who, in the opinion of GRNSW, had suitable legal qualifications to hold the office of Greyhound Racing Integrity Auditor (“Integrity Auditor”);<sup>519</sup> the appointment required Ministerial approval.<sup>520</sup> The functions of the Integrity Auditor and issues associated with that office are considered in Chapter 31.
- 6.13 A chart setting out the historical changes in the structure of the greyhound racing industry, details of the reports, inquiries and reviews which led to the restructuring and details of the more important office holders is at Appendix M to this Report.

## Role and make-up of the Board

- 6.14 GRNSW does not have a Board; rather it has appointed members, which are often referred to collectively as the “GRNSW Board”. The Commission has adopted this convention.
- 6.15 At the time of writing this report, there is no GRNSW Board.
- 6.16 As Mr Paul Newson, interim Chief Executive, observed in GRNSW’s Annual Report 2015:
- The NSW Deputy Premier and Minister for Racing, the Hon. Troy Grant, MP decisively intervened to remove the GRNSW Board and Chief Executive following the airing of ABC’s *Four Corners* program, ‘Making a Killing’, on 16 February 2015. In response to the Deputy Premier’s intervention, on 19 February 2015, the GRNSW Board passed a majority resolution to immediately stand down the Chief Executive Mr Brent Hogan, appoint [Mr Newson] as interim Chief Executive and for each Board Member of GRNSW to immediately resign their membership.<sup>521</sup>
- 6.17 On 19 February 2015, all but one GRNSW Board Member resigned from the Board, with the Deputy Premier acting on 4 March 2015 to withdraw that final member’s appointment.
- 6.18 As outlined above, GRNSW is a body corporate, independent of Government, established by the Act.<sup>522</sup>
- 6.19 The GRNSW Board consists of five members (currently vacant positions). Restrictions on appointment include that a person is not eligible if the person is an employee of a greyhound racing club, a member of the governing body of a club or industry body, registered with GRNSW or HRNSW (ie. as an active participant), or the holder of a license issued by Racing NSW.<sup>523</sup>
- 6.20 A person cannot be appointed to the GRNSW Board for more than eight years in total.<sup>524</sup>
- 6.21 Pursuant to s. 7 of the Act, recommendations for appointment as a Board member are made by a selection panel, established by the Minister, and appointments are made by the Minister to give effect to the recommendation.<sup>525</sup>

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<sup>517</sup> *Racing Appeals Tribunal Act 1983* (NSW) s. 15A, s. 15B, as amended by the *Racing Legislation Amendment Act 2009* (NSW) Sch. 1.

<sup>518</sup> The Act s. 5.

<sup>519</sup> The Act s. 25(1).

<sup>520</sup> The Act s. 25(3).

<sup>521</sup> GRNSW Annual Report 2015, p. 2.

<sup>522</sup> The Act s. 4, s. 5.

<sup>523</sup> The Act s. 6(1), s. 6(2). Further restrictions include: being disqualified, warned off named on the Defaulters List under the rules in the past ten years; being convicted of an offence punishable by imprisonment for 12 months or more in the past ten years; being an undischarged bankrupt; or mental incapacitation.

<sup>524</sup> The Act s. 6(4).

<sup>525</sup> The Act s. 7.

6.22 In introducing the Greyhound Racing Bill to Parliament on 2 April 2009, the then Minister for Gaming and Racing, the Hon. Kevin Greene MP, made no specific reference to the Board selection panel. He did, however, refer to three sources which informed the proposed legislation:

The proposals are based on amendments made last year to the Thoroughbred Racing Act 1996, which provides for the arrangements under which Racing New South Wales operates. The proposals are also based on the recommendations made in the Malcolm Scott Review and the statutory five-year review of the greyhound and harness racing legislation. All of these have involved substantial consultation and consideration of what is the best way forward.<sup>526</sup>

6.23 Neither the June 2008 five-year statutory review of the greyhound and harness racing legislation, nor the “Report of the 2008 Independent Review of the Regulatory Oversight of the NSW Racing Industry” by Malcolm Scott (“the Scott Report”) proposed the establishment of a selection panel to recommend persons to be appointed to the GRNSW Board. These reviews are considered, more fully, elsewhere in this Report.

6.24 The then Minister also noted:

The governance arrangements to be implemented are based on the Racing New South Wales model introduced last year.<sup>527</sup>

6.25 Section 7 of the *Thoroughbred Racing Act 1996* (the “TRA”) was introduced in 2008 and provided for the implementation of a Board selection panel for Racing NSW.<sup>528</sup> The section is mirrored, to some extent, in the Act.

6.26 In his speech to Parliament introducing the Bill to amend the TRA in 2008, the Minister described the new Board selection process in the following terms:

The Appointments Panel provisions are to be repealed, including the setting aside of any of its nominations or purported decisions. In its place, the proposed amendments will provide for an independent selection panel to be constituted by the Minister. The independent selection panel is to recommend five persons for appointment as members of Racing New South Wales. The panel may also recommend terms of up to four years. The Minister is to give effect to those recommendations. That means this panel of three eminent people will make the decisions and I will support and endorse those decisions.<sup>529</sup>

6.27 In the Act, like the TRA, the selection panel must not recommend a person:

... unless the Panel is satisfied that the person has experience in a senior administrative role or experience at a senior level in one or more of the fields of business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement.<sup>530</sup>

6.28 Before recommending a person, the selection panel “must conduct a probity check of the person (with the level of scrutiny as determined by the Minister)”, with the Minister required to appoint a Probity Adviser to assist the selection panel to conduct probity checks.<sup>531</sup>

6.29 The selection panel is required to choose between candidates for recommendation:

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<sup>526</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 2 April 2009, 14430 (Kevin Greene).

<sup>527</sup> *Ibid.*

<sup>528</sup> *Thoroughbred Racing Further Amendment Act 2008* (NSW) s. 7.

<sup>529</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 October 2008, 10921 (Kevin Greene). The Minister observed at [10920] that the amendment was a result of the then process for appointing an independent Board having “stalled” (having commenced in August 2008) and because the probity adviser involved in the appointment process had advised that he “was not able to give probity assurance in relation to the process”.

<sup>530</sup> The Act s. 7(3); TRA s. 7(3).

<sup>531</sup> The Act s. 7(4); TRA s. 7(4).

... on the basis of 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...<sup>532</sup>

6.30 The Act *does not* contain the requirement found in the TRA that the selection panel must not recommend a person if they are:

... satisfied that the person has a direct or indirect pecuniary interest in any matter that gives rise (or is likely to give rise) to a conflict of interest of a nature that is incompatible with membership of Racing NSW.<sup>533</sup>

6.31 Significantly, the TRA was further amended in 2011, to give the Minister "purview" over the appointment process. The Minister at the time, the Hon. George Souris MP, made the following remarks on introducing the amendments to Parliament:

Currently, the independent selection panel is limited to recommending appointees for the precise number of vacancies on the board. Under the new provisions, the independent selection panel will be required to provide a list of recommended appointees that exceeds the number of vacancies so as to enable the Minister to make a selection. **This arrangement gives the Minister greater purview over the appointment process** and, coupled with the expansion of the board from five to seven members, reflects the need to broaden the skill base of the board and allows for the appointment of the best available talent.<sup>534</sup> (Emphasis added)

6.32 The Minister does not currently have a legislated "purview" over appointments to the GRNSW Board. The role of the Minister in the selection of the GRNSW Board is discussed further in Chapter 29.

6.33 Section 8 of the Act required the Minister, prior to February 2012, to review the appointment process embodied in ss. 6 and 7 and cl. 3 of Schedule 1 to the Act, to determine whether their policy objectives remained valid and whether their terms remained appropriate for securing those objectives.<sup>535</sup> A report was to be tabled in each House of Parliament within 12 months after the review was completed.<sup>536</sup>

6.34 The NSW Office of Liquor, Gaming & Racing ("OLGR") commenced a review of the appointments process in 2011, with its report prepared in November 2013 and tabled in the Legislative Assembly on 27 March 2014 ("the OLGR Report").<sup>537</sup> This review concerned the appointments process under both the Act and the HRA, the appointment process being the same under both Acts.

6.35 Around the same time as the OLGR Report was tabled, the NSW Legislative Council's 2014 Select Committee on Greyhound Racing in NSW ("the Select Committee") commenced (on 27 August 2013). During the course of the Select Committee's inquiry, the appointment process and eligibility criteria under the Act were also examined. The Select Committee published its First Report in March 2014 ("the Select Committee First Report"). In addition, the Five Year Statutory Review of the TRA ("the Thoroughbred Act Review") considered the appointment process, with a report of that review tabled in Parliament on 6 August 2014.<sup>538</sup>

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<sup>532</sup> The Act s. 7(5); TRA s. 7(5).

<sup>533</sup> TRA s. 7(6).

<sup>534</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 11 October 2011, 5950 (George Souris).

<sup>535</sup> The Act s. 8.

<sup>536</sup> The Act s. 8(3).

<sup>537</sup> NSW Office of Liquor Gaming & Racing, report "Appointments Process Review: Greyhound Racing NSW – *Greyhound Racing Act 2009*; *Harness Racing NSW – Harness Racing Act 2009*" (November 2013).

<sup>538</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* (Tabled August 2014).

- 6.36 To date, the selection process for the GRNSW Board remains as it was in 2009. The Commission has considered the OLGR Report, the Select Committee First Report and the report of the Thoroughbred Act Review. GRNSW's Board composition and the appointment selection process are discussed in detail in Chapter 30.
- 6.37 The Commission's recommendations in relation to these matters are outlined in Chapter 30, which expands on its recommendations in relation to GRNSW's future structure, if the industry is to continue, in Chapter 29.

## Board members

- 6.38 With the dismantling of the former GHRRA in 2009, GRNSW became responsible for the regulation of all aspects of the greyhound racing industry in NSW. In relation to the Board, in the GRNSW Annual Report 2009, the then Chairman, Prof Percy Allan AM, observed:

The Government also announced in the last 12 months its intention to shift GRNSW from its current representative Board structure to one of independence in the medium to long term. Our Board maintains however, that a representative Board structure is the most appropriate composition to advance the strategic development and governance of the sport. The results detailed in this annual report are testament to the success of the current representative Board structure and evidences that the current structure is delivering results for members of the sport.<sup>539</sup>

- 6.39 Through this transition, five of the six GRNSW Board members continued in office from the previous financial year.<sup>540</sup>
- 6.40 These six GRNSW Board members comprised nominees from the NSW National Coursing Association, the NSW Greyhound Breeders, Owners & Trainers' Association ("GBOTA"), the TAB clubs, the country clubs, and industry participants; with the Chair independent and appointed by the GRNSW Board members.<sup>541</sup>
- 6.41 The GRNSW Board members, for financial years 2009 to 2012 (until February of 2012), were as follows:
- Prof Percy Allan AM, (BEc, MEc, FIPAA, FAICD, FAIM, FCPA Australia, and Trustee of CEDA), who had been Chairman of GRNSW at its inception.
  - Jack Primmer, who was appointed in April 2005 as the first TAB clubs' representative.
  - Gabriel (Bill) Mangafas, who was also appointed to the GRNSW Board at its inception as GBOTA's nominee.
  - Murray Nicol (MBA, MGSM), who was appointed to the GRNSW Board in May 2008 as a nominee of the NSW National Coursing Association.
  - Tom Green, who was appointed in financial year 2009 as a nominee of country racing clubs. Mr Green had been a member of the Greyhound Racing Control Board between 1987 and 1992 (serving three of those years as Deputy Chair).
  - Joyce Alamango, who was first appointed to the GRNSW Board in February 2008 as the representative of industry participants.<sup>542</sup>

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<sup>539</sup> GRNSW Annual Report 2009, p. 2.

<sup>540</sup> Ibid, p. 3.

<sup>541</sup> Ibid, inside cover.

<sup>542</sup> Ibid, pp. 28-29.

- 6.42 A new Chair and two new Board members were appointed in February 2012 (replacing Prof Allan and Messrs' Primmer, Mangafas and Green). In the GRNSW Annual Report 2012, the new Chair, Ms Eve McGregor, described the changes as "herald[ing] a new era for GRNSW with a new independent Board replacing the industry representative Board in February 2012".<sup>543</sup>
- 6.43 The GRNSW Board members, for financial years 2012 (from February 2012) and 2014 (until February 2014) were as follows:
- Ms McGregor (BA, LLB), who was appointed Chair in February 2012. At the time of her appointment, Ms McGregor was a corporate lawyer.
  - David Clarkson (MA (Oxon), FCA), who was appointed Deputy Chair in February 2012. At the time of his appointment, Mr Clarkson was a Chartered Accountant, Financial controller and Company Secretary.
  - George Bawtree (BA, FIPPA), who was appointed in February 2012. From 2004 to 2007, Mr Bawtree had been the Chief Executive of GRNSW.
  - Mr Nicol, who was already a member.
  - Ms Alamango, who was already a member.<sup>544</sup>
- 6.44 The GRNSW Board members for financial years 2014 (from February 2014) and 2015 (to February 2015) were as follows:
- Ms McGregor, Mr Clarkson and Mr Bawtree.
  - Peter Davis, who was appointed in February 2014. Mr Davis was, at the time of his appointment, regional racing Editor for Fairfax Media.
  - Megan Lavender, who was appointed in February 2014. Ms Lavender had held senior management roles in the corporate, government and non-profit sectors.<sup>545</sup>

## GRNSW organisational structure and roles: February 2015

- 6.45 The functions of GRNSW are outlined in s. 9 of the Act and include:
- a) to control, supervise and regulate the greyhound racing industry in NSW;
  - b) to register greyhound racing clubs, trial tracks, greyhounds, owners and trainers of greyhounds, bookmakers for greyhound racing and other persons associated with greyhound racing (which includes a person who handles greyhounds at a greyhound race or trial, a bookmaker's clerk, a greyhound breeder, a person who manages or controls a greyhound trial track, and 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);<sup>546</sup>
  - c) to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the greyhound racing industry in NSW;

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<sup>543</sup> GRNSW Annual Report 2012, p. 2.

<sup>544</sup> Ibid pp. 24-25; GRNSW Annual Report 2014, pp. 20-21.

<sup>545</sup> Ibid, pp. 20-21.

<sup>546</sup> The Act s. 3(2).

- d) to distribute money received as a result of commercial arrangements required by the *Totalizator Act 1997*; and
- e) to allocate the dates on which greyhound racing clubs may conduct greyhound racing meetings.

- 6.46 The powers of GRNSW are discussed elsewhere in this Report.
- 6.47 The Act provides that GRNSW may employ a Chief Executive Officer who is responsible for the day-to-day-management of GRNSW.<sup>547</sup>
- 6.48 When the *Four Corners program* exposed the fact that the practice of “live baiting” had been occurring in NSW, Queensland and Victoria, GRNSW’s day-to-day operations were under the control of the then Chief Executive, Mr Brent Hogan.
- 6.49 Having commenced work in the industry as a policy and correspondence clerk with the GRA from February 2002, in February 2003 Mr Hogan moved to GRNSW as a Policy and Marketing Officer; he became the Manager of Policy and Industrial Development in 2004 and was appointed Chief Executive from 1 July 2007.<sup>548</sup>
- 6.50 As Chief Executive, Mr Hogan’s role entailed organisational oversight, including GRNSW’s strategy and direction, finance, information technology, people management and corporate external relations.<sup>549</sup>
- 6.51 As previously noted, on 19 February 2015, the GRNSW Board passed a majority resolution to immediately stand down Mr Hogan.
- 6.52 The Act provides that GRNSW may employ such staff as it requires to exercise its functions and may engage consultants for the purpose of obtaining expert advice.<sup>550</sup>

### **GRNSW’s business operations**

- 6.53 As at 16 February 2015, GRNSW’s managerial “Leadership Group”<sup>551</sup> consisted of Mr Hogan and General Managers of GRNSW’s “four core business units”:<sup>552</sup>
- General Manager Wagering, Media and Content (Mr Michael East);
  - Executive General Manager, Operations (Mr Patrick Hallinan);
  - General Manager, Integrity (Mr Bill Fanning); and
  - General Manager, Education and Welfare (Mr Tony O’Mara).
- 6.54 In addition, Mr Hogan engaged a Strategy Analyst and a Special Projects Manager, with GRNSW’s business support provided by a Financial Manager who supervised an accounts clerk and an assistant accountant. GRNSW’s Data and Business Systems Management was outsourced.
- 6.55 Organisational charts for GRNSW as it existed in 2009 and at periods up to June 2016 and as it currently exists are provided as Appendix N of this Report.

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<sup>547</sup> The Act s. 13.

<sup>548</sup> Brent Hogan, 1 October 2015: T300.29-301.10; and provided in submissions to the Commission dated 1 June 2016.

<sup>549</sup> GRNSW Organisational Structure as at 19 February 2015: GRNSW Response to Order 1 dated 1 May 2015, [12].

<sup>550</sup> The Act s. 14.

<sup>551</sup> GRNSW Response to Order 1 dated 1 May 2015, [12].

<sup>552</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [117].

6.56 The Commission's views on the adequacy of the staffing levels at GRNSW as at 16 February 2015 are discussed throughout this Report. At the time of the *Four Corners program*, GRNSW was operating with only three compliance officers. This was insufficient to provide thorough oversight of industry participants and to ensure the integrity of the industry and the welfare of the greyhounds.

## GRNSW organisational structure and roles today

6.57 On 1 May 2015, the current interim Chief Executive of GRNSW, Mr Paul Newson, informed the Commission that:

Further structural design and resourcing decisions to better support industry supervision and welfare outcomes, while striving to secure a sustainable future for the sport, remain under consideration. It is anticipated that additional resources will be engaged shortly including four new compliance staff in conjunction with a realignment of existing resources. Additional investment in veterinary capability is under active consideration.<sup>553</sup>

6.58 In August 2015, Mr Newson said that GRNSW was not satisfied with a structure where the Education and Welfare Unit was responsible for animal welfare policy, compliance and maintaining external relationships with animal welfare agencies and where the Integrity Unit was responsible for:

- race day stewarding;
- investigations and inquiries;
- regulatory policy;
- rule development; and
- external relations with drug and law enforcement agencies.<sup>554</sup>

6.59 Mr Newson said that this was not the most appropriate structure for effective industry supervision because it promoted silos between the units, which lacked coherency in discharging their respective functions.<sup>555</sup>

6.60 Further, Mr Newson said that:

... the legacy staffing resources and structure were inadequate to meet the requirements for proper regulation and supervision of the industry. While the development of a dedicated Welfare Compliance Section in 2014 was a positive step to ensure compliance with welfare standards was monitored, GRNSW concedes that the implementation and effectiveness of the Compliance Section was undermined by the absence of a considered and coherent strategy, limited leadership, insufficient regulatory knowledge and insufficient skills, experience and accountability.<sup>556</sup>

6.61 As at February 2015, GRNSW had only three welfare/compliance officers and a compliance co-ordinator, overseen by the Compliance Manager. Yet their work involved inspections of properties across NSW, issuing work directions and attending to follow-up inspections, providing education, assistance and training to industry participants and interacting with RSPCA NSW and the NSW Police Force in regard to any welfare matters. The impacts of such under resourcing with respect to kennel inspections are discussed in Chapter 22.

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<sup>553</sup> GRNSW, Response to Order 1 dated 1 May 2015, [12].

<sup>554</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [308].

<sup>555</sup> *Ibid*, [309].

<sup>556</sup> *Ibid*, [310].

6.62 In August 2015, GRNSW was of the view that its regulatory capability must be expanded, through the engagement of additional compliance staffing arrangements, as the current arrangements were “not sustainable or adequate”.<sup>557</sup>

6.63 Mr Newson proposed a new structure, introducing a Compliance Unit that comprised:

- a new Investigations team;
- a new Intelligence team;
- a restructured Compliance team; and
- the Integrity team.<sup>558</sup>

6.64 The new General Manager Compliance was to be employed to lead and direct:

GRNSW’s risk based and outcomes focused compliance approach, intelligence and investigative activities and associated integrity function and disciplinary proceedings under the Greyhound Racing Rules to uphold the integrity of greyhound racing in NSW.<sup>559</sup>

6.65 As Mr Newson noted in August 2015, the establishment of the Welfare and Integrity Fund will generate approximately \$1.1m and, amongst other things, support these additional compliance resources. He also submitted that GRNSW “will need to secure long-term funding to ensure this Compliance Unit can continue into the future.”<sup>560</sup>

6.66 On 17 March 2016, the Commission obtained an updated Organisational Chart for GRNSW. While anticipating further changes to the structure “particularly to embed best practice governance arrangements around our commercial and regulatory functions”, Mr Newson said of the new structure:

[W]e continue to focus on capability development, navigate industry reform and associated challenges, and await the [Commission’s report]. The findings and recommendations of the Commission and the NSW Government’s response will determine the future of greyhound racing in NSW and the nature of the regulatory framework ... Much has been achieved, but significant work remains.<sup>561</sup>

6.67 The new organisational structure includes:

- an Operations Branch;
- a Media, Communications and Wagering Branch;
- a Regulatory Branch;
- a Welfare Branch;
- a Legal Policy Branch; and
- Finance, People and Culture.

6.68 A copy of the GRNSW Organisational Chart as at March 2016 is provided as Appendix N to this Report.

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<sup>557</sup> Ibid, [317].

<sup>558</sup> Ibid, pp. 79-82.

<sup>559</sup> Ibid, [313].

<sup>560</sup> Ibid, [318].

<sup>561</sup> Organisational chart attached to correspondence dated 17 March 2016 from Paul Newson, GRNSW Interim Chief Executive to Cheryl Drummy, Special Counsel for the NSW Crown Solicitor assisting the Commissioner.

## GRNSW's consultants

6.69 Since February 2015, GRNSW has engaged a number of external consultants, researchers and investigators, in an endeavour to obtain information about, and guidance in relation to, the many issues faced by the industry. Where such engagements have resulted in a final report (or equivalent) being produced to GRNSW (and, in turn, the Commission), the Commission has considered such material. The consultants engaged by GRNSW have included:

- Mr David Madden, a former Deputy Commissioner of the NSW Police Force, who GRNSW engaged in April 2015 to conduct investigations into a range of internal matters and the GRNSW drug swabbing and testing regime.<sup>562</sup> Since his engagement in April 2015, Mr Madden has provided several investigation reports to GRNSW, aspects of which are referred to throughout this Report.
- Advisory and investment firm KordaMentha, which GRNSW engaged in mid-2015 to provide a range of forensic and data analytics services. GRNSW's engagement of KordaMentha was ongoing as at May 2016. Work performed by KordaMentha has included creating an e-discovery platform to enable a review of GRNSW emails.<sup>563</sup>
- Working Dog Alliance Australia ("the WDA"),<sup>564</sup> which GRNSW commissioned in 2015 to review and assess best practice rearing, socialisation, education and training methods for greyhounds in a racing context. The WDA provided its report to GRNSW in July 2015.<sup>565</sup>
- Accounting firm KPMG, which GRNSW retained in 2015 to assist in its development of a Strategic Plan and forging a sustainable pathway for greyhound racing in the future. KPMG provided a strategic report to GRNSW in August 2015, "Articulating the Way Forward",<sup>566</sup> which is considered in Chapters 25–27 of this Report.
- Dr Rod Ferrier, who GRNSW engaged in 2015 to detail the financial outlook and sustainability for GRNSW up to FY20. Dr Ferrier provided a report to GRNSW in August 2015 (untitled),<sup>567</sup> which is considered in Chapter 25 of this Report.
- The Joint Working Group ("the JWG"), established by GRNSW in November 2015 to investigate a range of options for driving reform in the greyhound racing industry. The JWG provided a preliminary draft report to GRNSW in December 2015 and a final report to GRNSW on 29 January 2016.<sup>568</sup> The final report of the JWG is considered throughout this Report.
- Sector Seven Consultancy Pty Ltd, which GRNSW engaged to review its procedures for the recording and reporting of on-track injuries and fatalities sustained by greyhounds. Sector

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<sup>562</sup> GRNSW, Response to Order 6 dated 11 August 2015, pp. 1-3, 6-7.

<sup>563</sup> Ibid, p. 6.

<sup>564</sup> The Working Dog Alliance Australia ("the WDA") is not-for-profit organisation whose mission is to engage and unite the Australian working and sporting dog industry to advance the welfare and productivity of Australia's iconic working and sporting dogs.

<sup>565</sup> WDA, report "Review & Assessment of Best Practice Rearing, Socialisation, Education & Training Methods for Greyhounds in a Racing Context" (July 2015) ("the WDA Report"). The WDA Report was marked Ex S (17-19 November 2015) in the Commission's hearings.

<sup>566</sup> KPMG, report "Articulating the Way Forward" (August 2015): Appendix M to GRNSW's Submission to the Commission dated 24 August 2015.

<sup>567</sup> Dr Rod Ferrier, report (untitled) for GRNSW (August 2015): Appendix P to GRNSW's Submission to the Commission dated 24 August 2015.

<sup>568</sup> Joint Working Group, final report "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).

Seven provided a report of its review to GRNSW in December 2009,<sup>569</sup> which is referred to in Chapter 4 of this Report.

- Prof Paul McGreevy and Dr Mel Starling of the University of Sydney, who GRNSW commissioned for a two-year study aimed at investigating chase motivation in greyhounds and identifying “early life experience and ongoing learning difficulties that influence chase proneness”.<sup>570</sup> The Commission was informed by GRNSW in May 2016 that project milestones for the research were agreed at a meeting on 7 March 2016.<sup>571</sup>
- The University of Technology Sydney (“UTS”), which GRNSW commissioned in March 2016 to undertake a “vital piece of research” with the aim of identifying “optimal greyhound race track design for canine safety and welfare”. The research is expected to take up to 12 months to complete.<sup>572</sup> GRNSW informed the Commission that the research commenced on 4 April 2016.<sup>573</sup> This research project is discussed in more detail in Chapter 15 of this Report.
- Management consulting firm Nous Group, which GRNSW commissioned to review the delivery of veterinary services across NSW greyhound racing clubs, with the aim of identifying opportunities to improve services and to ensure their efficient and effective delivery. Nous Group provided a report to GRNSW on 24 March 2016, which is considered in Chapter 17 of this Report.<sup>574</sup>
- The University of Sydney’s Faculty of Veterinary Science, which GRNSW engaged to conduct research into the inheritance of the disorder “pannus” (chronic superficial keratitis) in greyhounds, which affects the cornea and can cause visual impairments. As at March 2016, GRNSW was calling for affected greyhounds to partake in the research by providing buccal swabs or blood samples.<sup>575</sup>
- Sector Seven Consultancy Pty Ltd, which GRNSW engaged to identify how it may improve its model and approach towards stewards and stewarding. Sector Seven provided a report to GRNSW on 29 April 2016,<sup>576</sup> which is considered in Chapter 24 of this Report.
- Consulting firm Urbis, which GRNSW engaged to undertake an assessment of the distribution of greyhound racing clubs in NSW. Urbis was tasked with considering whether the current “network of clubs could be rationalised while still providing adequate opportunities for racing for greyhound trainers”.<sup>577</sup>

6.70 In addition to the matters addressed at [6.69] above, GRNSW indicated in its Annual Report 2015 that, as part of its “Research Agenda”, it would examine the following matters in the next three to five years:

- Lure design: this was said to involve an initial pilot study to assess the methods to chase lures employed by successful trainers, followed by a study into whether the “finish on” lure system improves canine performance.

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<sup>569</sup> Sector Seven Pty Ltd, report “Review of GRNSW governance arrangements regarding Stewards reporting of greyhound racing injury, fatality, and related euthanasia” (December 2015): GRNSW Response to Order 22 dated 11 December 2015.

<sup>570</sup> GRNSW, Response to Order 27 dated 19 February 2016, p. 17.

<sup>571</sup> GRNSW, Submission to the Commission dated 24 May 2016, [96].

<sup>572</sup> Article “GRNSW Reform Bolstered By Major Initiatives” by GRNSW, 20 March 2016, *GRNSW website*.

<sup>573</sup> GRNSW, Submission to the Commission dated 24 May 2016, [144].

<sup>574</sup> Nous Group, report “Review of Greyhound Racing Veterinary Services in New South Wales” (March 2016).

<sup>575</sup> Article “Greyhounds With Pannus Required For Study” by GRNSW, *GRNSW website*.

<sup>576</sup> Sector Seven Pty Ltd report “Stewards Review Report” (April 2016).

<sup>577</sup> Letter dated 12 May 2016 from Rhys Quick, Director Economic and Market Research, Urbis, to Patrick Hallinan, General Manager GRNSW.

- Genetics: this was said to involve employment of a “quantitative geneticist” to calculate indices for racing greyhounds using existing databases and pedigree information, which will play a “vital role” in identifying suitable traits for breeding and whether injury risk in greyhounds is hereditary.
- Health: this was said to involve the drafting of a “disease surveillance system” to act as a database for health-related research and to identify the diseases most relevant to racing greyhounds. It also involves a proposal to secure funding for a study “to identify the pathogens of most relevance in the disease complex of canine infectious cough”.<sup>578</sup>

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<sup>578</sup> GRNSW Annual Report 2015, p. 14



# 7 Governance: Greyhounds Australasia

## Greyhounds Australasia

- 7.1 Greyhounds Australasia Ltd (“GA”) is a non-profit greyhound racing industry peak body comprising representatives from jurisdictional controlling bodies in Australia and New Zealand. Membership of GA is generally restricted to entities that are mandated by law to control or regulate greyhound racing in an Australian and New Zealand jurisdiction.<sup>579</sup>
- 7.2 Each of GA’s member bodies are ultimately subject to their own State or Territory legislation. GA, therefore, describes itself as the “support arm” which creates “consistency and uniformity where that outcome is in the best interests of its members”. GA’s predecessor organisation, the Australian and New Zealand Greyhound Association (“ANZGA”) was established in 1937. It was reconstituted in 2003 by the establishment of GA as a public company.<sup>580</sup>
- 7.3 The GA Charter is to “to support [its] jurisdictions via encouragement of a national approach to the Australasia greyhound racing industry”. GA says it does this by providing value-added services and practices to ensure the integrity and sustainability of the industry.<sup>581</sup>
- 7.4 GRNSW is a member of GA, as are the following eight Australian and New Zealand controlling bodies:
- Greyhound Racing Victoria (“GRV”);
  - Racing and Wagering Western Australia (“RWVA”);
  - Racing Queensland (“RQ”);
  - Tasracing;
  - Greyhound Racing South Australia Ltd (“GRSA”);
  - the Northern Territory Government, Racing Gaming & Licensing;
  - Canberra Greyhound Racing Club (“CGRC”); and
  - Greyhound Racing NZ (“GRNZ”).
- 7.5 GA has a Board of Directors comprised of representatives from each of its member bodies. In June 2015, GA announced that its Board had approved a “national industry vision and values”; the vision and values of GA are:

### Vision

That GA and its members always:

- Put animal welfare at the centre of everything we do
- Work together to eradicate unnecessary euthanasia of greyhounds as a national priority
- Act in a manner that engenders community trust

### Values

- Animal welfare first

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<sup>579</sup> GA website, “About Greyhounds Australasia”: <<http://www.galtd.org.au/general/about-greyhounds-australasia>> (accessed 25 May 2016).

<sup>580</sup> Ibid.

<sup>581</sup> GA, Response 21 to the Breeding Issues Paper dated 23 November 2015, p. 1.

- Accountability
- Honesty
- Transparency
- Excellence<sup>582</sup>

7.6 In its response to the Commission’s Breeding Issues Paper issued on 21 October 2015, GA stated that it is:

[C]ommitted to significant industry reform and securing a sustainable and vibrant future for greyhound racing in all of Australia and New Zealand by supporting controlling authority measures that enable each to meet their moral obligations to the community.<sup>583</sup>

7.7 GA has a number of committees and working parties, made up of representatives from its member bodies. GA’s committees and working parties include the following:

- Welfare Working Party;
- Rules and Integrity Committee;
- Vets and Analysts Committee; and
- Racing Committee.<sup>584</sup>

7.8 GA also runs two conferences: the Registrars Conference (held annually); and the National Integrity Conference (held twice per year). At the former, representatives from each GA controlling body meet to discuss matters relating to registration and licensing. At the latter, the Chief Stewards from each GA controlling body meet to discuss changes to the Greyhounds Australasia Rules (“GAR”) and regulatory matters.<sup>585</sup>

## Greyhounds Australasia Rules

7.9 The GAR are a set of “national” rules which regulate greyhound racing in almost all of GA’s member jurisdictions.<sup>586</sup> Pursuant to R 3(1), the GAR apply to:

[T]he Controlling Body, every Club, and their members, officers, officials, stewards and servants, and every person who takes part in any event or attends any race meeting or trials or wagering at race meetings or any other proceeding or matter purporting to be conducted pursuant to or which is governed by these Rules and any greyhound registered with or appearing in the records of a Controlling Body in any capacity.

7.10 As at May 2016, the GAR had been adopted (with local amendments) by GRNSW, RWWA, GRSA and the CGRC.<sup>587</sup>

7.11 In Queensland,<sup>588</sup> Tasmania,<sup>589</sup> and the Northern Territory,<sup>590</sup> the respective controlling bodies use both the GAR and their own separate sets of Local Rules.

<sup>582</sup> GA website, “National Industry Vision and Values to Drive Sustainability”: <<http://www.galtd.org.au/news-article/national-industry-vision-and-values-drive-sustainability>> (accessed 25 May 2016).

<sup>583</sup> GA, Response 21 to the Breeding Issues Paper dated 23 November 2015, p. 1.

<sup>584</sup> GA website, “GA Committees and Working Parties”: <<http://www.galtd.org.au/general/ga-committees-and-working-parties>> (accessed 25 May 2016).

<sup>585</sup> Ibid.

<sup>586</sup> GA website, “Greyhounds Australasia Rules (“GAR”): <<http://www.galtd.org.au/sites/default/files/forms-and-documents/GA%20Rules%20010116.pdf>> (accessed 26 May 2016).

<sup>587</sup> RWWA website, “RWWA Rules of Greyhound Racing”: <[https://www.rwwa.com.au/home/documents/RWWA\\_GreyhoundRules\\_April\\_2016.pdf](https://www.rwwa.com.au/home/documents/RWWA_GreyhoundRules_April_2016.pdf)> (accessed 26 May 2016); GRSA website, “Rules of Greyhound Racing SA Limited: <<http://sa.thedogs.com.au/Uploads/Rule%20Book%20New%20Edition%2001-01-2016.pdf>> (accessed 30 May 2016); CGRC website, “The Canberra Greyhound Racing Club Rules”: <[http://media.wix.com/ugd/2445cf\\_7c5a5257fd754239be5468e1b6aa1348.pdf](http://media.wix.com/ugd/2445cf_7c5a5257fd754239be5468e1b6aa1348.pdf)> (accessed 30 May 2016).

- 7.12 In New Zealand, the GAR have not been adopted by GRNZ and, instead, the industry is regulated by the “Rules and Constitution of New Zealand Greyhound Racing Association (Incorporated)”.<sup>591</sup>
- 7.13 Different legislation in force in each of GA’s controlling body jurisdictions may prevent jurisdictions from adopting all of the GAR. For this reason, R 5 provides that, in such instances, member bodies will adopt Local Rules to accommodate their individual legislative requirements. Any such Local Rules are distinguished from the GAR by use of the prefix “LR”. This is why in NSW, for example, the GRNSW Greyhound Racing Rules (“the Rules”) contain both the GAR and a number of Local Rules in the same document.
- 7.14 Under R 6, the Local Rules of a controlling body apply and form part of the GAR. Pursuant to R 7, the Local Rules of a controlling body take precedence over the GAR. Further, if a GAR is inconsistent with a provision contained in either an Act or Regulations, then the latter prevails.<sup>592</sup>
- 7.15 If a GAR is amended in any way, “it shall be adopted by a resolution of a Controlling Body before it is deemed to apply in that jurisdiction.”<sup>593</sup> Controlling bodies must publish amendments to these GAR and such amendments shall become effective from a date so indicated.<sup>594</sup>

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<sup>588</sup> RQ website, “Local Rules of Racing (Greyhound Racing)”: <<http://www.racingqueensland.com.au/getmedia/2d1cee0a-f3ef-43a9-91d4-c9ef9cf42c93/RQ-Greyhound-Local-Rules.pdf.aspx>> (accessed 26 May 2016).

<sup>589</sup> Tasracing website, “Tasmanian Greyhound Local Rules of Racing”: <<https://tasracing.com.au/wp-content/uploads/2015/11/Local-Rules-01-01-2016-with-cover.pdf>> (accessed 26 May 2016).

<sup>590</sup> Northern Territory Government, Racing Gaming & Licensing, “Northern Territory of Australia Greyhound Racing Rules”: <[http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/d8fcb30be6ad3cb369257d6a00820e8a/\\$FILE/ATTB8TOC.pdf/Repr016R2.pdf](http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/d8fcb30be6ad3cb369257d6a00820e8a/$FILE/ATTB8TOC.pdf/Repr016R2.pdf)> (accessed 26 May 2016).

<sup>591</sup> GRNZ, “Rules and Constitution of New Zealand Greyhound Racing Association (Incorporated)”: <<https://www.thedogs.co.nz/Files/Documents/Final%20-%20Rules%20-%20Effective%201%20Febrary%202016.pdf>> (accessed 26 May 2016).

<sup>592</sup> GAR R 10.

<sup>593</sup> GAR R 8.

<sup>594</sup> GAR R 9.



## 8 Animal welfare: the statutory scheme

### Introduction

- 8.1 Regulation of the welfare of greyhounds in New South Wales is fragmented. This is not an uncommon feature of animal welfare regulation generally. Animal welfare regulation must not only prescribe welfare standards for all animals but must also address, in different ways, issues which are peculiar to particular animals or animals with a particular status.
- 8.2 A similar problem was identified in Victoria by Dr Charles Milne, Chief Veterinary Officer, in his report, *Investigation into Animal Welfare and Cruelty in the Victorian Greyhound Industry*, published on 30 April 2015 (“the Milne Report”). Dr Milne noted that regulation of the greyhound racing industry in Victoria was fragmented. It also lacked coordination and oversight between the different bodies involved in safeguarding the welfare of greyhounds. Information sharing and the referral of potential animal welfare breaches had been poor within Greyhound Racing Victoria (“GRV”) and with welfare agencies. Except when responding to specific complaints, RSPCA Victoria and local government had deferred responsibility for greyhound welfare to GRV, which was under-powered. GRV was to ensure compliance to standards acceptable to the broader community were reflected in legislation such as the *Prevention of Cruelty to Animals Act 1986* (Vic.).<sup>595</sup> The Commission considers that similar issues exist in New South Wales.
- 8.3 However, the Commission does not support all of the recommendations made by Dr Milne. In particular, it does not consider that officers of the regulator should become authorised officers or inspectors under the *Prevention of Cruelty to Animals Act 1979* (NSW) (“the POCTAA”) with powers specific to greyhound businesses.
- 8.4 The components of the regulatory environment and the extent to which they adequately address the many welfare issues considered by the Commission during its inquiry are addressed in this Chapter and in Chapter 9.
- 8.5 The following statutes, regulations, rules, and codes of conduct are relevant:
- the POCTAA and the *Prevention of Cruelty to Animals Regulation 2012* (NSW) (“the POCTAR”);
  - the *Companion Animals Act 1998* (NSW) (“the CAA”) and the *Companion Animals Regulation 2008* (NSW) (“the CAR”);
  - the *Crimes Act 1900* (NSW) (“the Crimes Act”);
  - the *National Parks and Wildlife Act 1974* (NSW) (“the NPWA”);
  - the *Greyhound Racing Act 2009* (NSW) (“the Act”);
  - the GRNSW Rules of Racing (“the Rules”);
  - GRNSW’s *Code of Practice for Breeding, Rearing and Education and Code of Practice for the Keeping of Greyhounds in Training* (“GRNSW Codes of Practice”);

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<sup>595</sup> Milne Report, p. 2.

- the *NSW Animal Welfare Code of Practice No 5 – Dogs and Cats in Animal Boarding Establishments* of 1996 (“the enforceable Boarding Code”); and
- the *NSW Animal Welfare Code of Practice – Breeding Dogs and Cats* of 2009 (NSW) (“the enforceable Breeding Code”).

8.6 In addition to the above, of crucial relevance are the strategic plans which GRNSW is obliged to implement under the Act. GRNSW’s strategic plans and related issues are discussed in Chapter 10.

## Historical overview

8.7 Civilised societies have long regarded cruelty to animals as unacceptable; not just ethically and morally wrong, but criminal. Animal welfare is now frequently the subject of media coverage and public debate. However, concern for the welfare of animals is not a phenomenon of the 20th or 21st centuries.

8.8 In 1822, the *Cruel Treatment of Cattle Act* (3 Geo. 4, c. 71) or “Martin’s Act” was passed by Parliament in the United Kingdom (UK) to prevent the cruel treatment of cattle. It was the first animal welfare law<sup>596</sup> and, despite its title, also extended to horses and sheep.<sup>597</sup> Then, in 1824, the Society for the Prevention of Cruelty to Animals was established in England. It received royal patronage in 1837. In 1840 it became known as the Royal Society for the Prevention of Cruelty to Animals or the RSPCA (“RSPCA UK”).<sup>598</sup> Its current patron is Queen Elizabeth II. Throughout the 19th Century, RSPCA UK lobbied Parliament to pass laws to prevent cruelty to animals. The *Cruelty to Animals Act 1835* (5 & 6 Will 4, c. 59) amended the 1822 legislation to include dogs and “other domestic animals”. It also outlawed certain cruel practices such as bear-baiting and cockfighting.

8.9 In 1849, the *Cruelty to Animals Act* (12 & 13 Vict. c. 92) was enacted. It repealed and extended the reach of the two previous Acts. Offences of beating, ill-treatment, over-driving, abusing and torturing of any animal could lead to a fine of five pounds and compensation to a maximum of ten pounds. It was amended by the *Cruelty to Animals Act 1876* (39 & 40 Vict. c. 77), to control and licence animal experimentation. The *Protection of Animals Act 1911* (1 & 2 Geo. 5, c. 27) repealed the 1849 Act and consolidated several earlier pieces of legislation such as the *Wild Animals in Captivity Protection Act 1900* (63 & 64 Vict. c. 33). The offence of cruelty to animals was expanded to include the doing of any act which caused unnecessary suffering to an animal. The *Protection of Animals Act 1911* was largely repealed and replaced by the *Animal Welfare Act 2006* (c. 45) which also repealed and consolidated a number of other Acts which had been passed in the intervening period.<sup>599</sup>

8.10 In Australia, the enactment of legislation outlawing cruelty to animals followed a similar path. The first colony to enact legislation of this type was Van Diemen’s Land in 1837. New South Wales followed with the *Cruelty to Animals Act 1850* (14 Vict. 40). The remaining colonies did likewise in the 1860s and many Acts, both repealing and amending the legislation, followed. To a significant extent, the legislative history in Australia reflected that which had occurred in the UK. So too did the emergence of societies for the prevention of cruelty to animals. The first Society for the Prevention of Cruelty to Animals was formed in the colony of Victoria in 1871. This was

<sup>596</sup> Malcolm Caulfield, *Handbook of Australian Cruelty Law* (Animals Australia, 2008), p. 4.

<sup>597</sup> It was an offence under the Act to “wantonly and cruelly beat, abuse or ill treat any Horse, Mare, Gelding, Mule, Ass, Ox, Cow, Heifer, Steer Sheep or other Cattle”.

<sup>598</sup> RSPCA UK website, “Our History”: <<http://www.rspca.org.uk/utilities/aboutus/history>> (accessed 14 May 2016).

<sup>599</sup> It also introduced a new welfare offence. Section 9 confers upon animal owners a positive, although basic, duty of care to ensure that certain prescribed needs of animals are met.

followed by Tasmania in 1872, New South Wales in 1873, South Australia in 1875, Queensland in 1883, Western Australia in 1892, the Australian Capital Territory in 1955 and the Northern Territory in 1965. The royal patronage was extended to such of these bodies as were then established in 1923. In 1980, a national body was constituted.<sup>600</sup>

- 8.11 There are a number of welfare organisations apart from RSPCA Australia and its State and Territory manifestations, such as RSPCA NSW, that concern themselves with the prevention of cruelty to animals. One of particular importance is the Animal Welfare League NSW (“the AWL”). The AWL is a registered charity that has been caring for surrendered, neglected and abandoned animals for over 55 years.<sup>601</sup> It is of particular importance because, like RSPCA NSW, it has powers of investigation and enforcement under the POCTAA.

## The POCTAA and the POCTAR

- 8.12 The POCTAA and the POCTAR are currently the most important pieces of legislation governing animal welfare in this State. However, as their names suggest, the POCTAA and POCTAR are primarily concerned with the prevention of cruelty to animals.

### A need for further enforceable welfare standards

- 8.13 The principal standard adopted in most animal welfare legislation is the overarching prohibition against cruelty. Usually it is qualified by reference to its consequence, namely, that the animal is unreasonably, unnecessarily or unjustifiably inflicted with pain or death.<sup>602</sup> To cause an animal to suffer unnecessarily, or to subject it to any other treatment which amounts to an offence of cruelty, is self-evidently detrimental to its welfare. To that extent, there is a degree of common ground between cruelty and welfare but the two are not synonymous. Compromising an animal’s welfare does not amount in law to cruelty.

- 8.14 It has been said that a duty to not be cruel and a duty to promote the welfare of an animal are distinct, even if there is overlap:

... cruelty is defined as much by reference to the attitude and behaviour of the perpetrator, and the object which he seeks to achieve, as it is by the effect upon the victim, while welfare is concerned exclusively with assessing the state of the individual animal. This involves taking account of influences which may be either positive or negative, while cruelty is concerned only with treatment that is deleterious. This distinction is reflected in the thrust of public policy. On the one hand, the intention is to prevent cruel treatment by proscribing particular forms of behaviour. On the other, the aim is to promote improved standards of welfare by identifying those matters which are important to animals, and translating these into rules, guidance and advice, to which those responsible for their care are required to have due regard.<sup>603</sup>

- 8.15 Since the second half of the 20th century, the law has increasingly recognised a positive duty on those responsible for the care of animals to meet the welfare needs of those animals. The catalyst for change in Great Britain was the 1965 report of the Brambell Committee.<sup>604</sup> The Committee concluded that animals should have the freedom to stand up, lie down, turn around, groom themselves, and stretch their legs. These “five freedoms”, as currently expressed, are:

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<sup>600</sup> RSPCA Australia website, “Our History”: <<http://rspca.org.au/what-we-do/about-us/our-history/>> (accessed 14 May 2016).

<sup>601</sup> The national body is AWL Australia; AWL NSW website, “About us”: <<http://www.awlnsw.com.au/about-us.html>> (accessed 14 May 2016).

<sup>602</sup> See eg. the POCTAA s. 4(2).

<sup>603</sup> Radford M, *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford University Press, 2001).

<sup>604</sup> *Report of the Technical Committee to Enquire into the Welfare of Animals Kept Under Intensive Livestock Husbandry Systems*, Ministry of Agriculture, Fisheries and Food, Parliament of Great Britain, 1965.

- (a) Freedom from thirst, hunger and nutrition by ready access to fresh water and a diet to maintain full health and vigour;
- (b) Freedom from discomfort by providing a suitable environment including shelter and a comfortable resting area;
- (c) Freedom from pain, injury and disease by prevention or rapid diagnosis and treatment;
- (d) Freedom to express normal behaviour by providing sufficient space, proper facilities, and company of the animal's own kind; and
- (e) Freedom from fear and distress by ensuring conditions and treatment which avoid mental suffering.<sup>605</sup>

8.16 The Commission heard evidence that these five freedoms form the basic framework for animal welfare standards globally.<sup>606</sup>

8.17 The objects of the POCTAA are:

- (a) to prevent cruelty to animals; and
- (b) to promote the welfare of animals by requiring a person in charge of an animal:
  - i. to provide care for the animal, and
  - ii. to treat the animal in a humane manner, and
  - iii. to ensure the welfare of the animal.<sup>607</sup>

8.18 The objects of the POCTAA are wide enough to embody the basic framework for animal welfare reflected in the five freedoms. However, the operative parts of the legislation do not extend that far. The POCTAA focuses primarily on cruelty and certain cruel practices. To the extent that the POCTAA addresses the welfare of animals more generally, it imposes an obligation to do no more than provide food, drink and shelter which is proper and sufficient and which it is reasonably practicable to provide.<sup>608</sup>

8.19 In the United Kingdom, the five freedoms have been embodied in the *Animal Welfare Act 2006* (c. 45) (UK) ("the AWA UK"). A person commits an offence if they do not take such steps as are reasonable in all of the circumstances to ensure that the needs of an animal for which they are responsible are met to the extent required by good practice.<sup>609</sup> An animal's needs are defined to include its need for a suitable environment; its need for a suitable diet; its need to be able to exhibit normal behaviour patterns; any need it has to be housed with, or apart from, other animals; and its need to be protected from pain, suffering, injury and disease.<sup>610</sup> The maximum penalty applicable to this offence is imprisonment for 51 weeks, a fine of 5,000 pounds, or both.<sup>611</sup>

8.20 The Commission is required to review the existing legislative framework for the greyhound racing industry in this State including the POCTAA.<sup>612</sup> It is also required to evaluate the POCTAA in relation to animal welfare standards.<sup>613</sup> This does not mean that the Commission is required to carry out an open-ended review of the POCTAA or of welfare standards generally.

<sup>605</sup> Radford M, *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford University Press, 2001), p. 265.

<sup>606</sup> Dr Jade Norris, 19 November 2015: T674.25.

<sup>607</sup> POCTAA s. 3.

<sup>608</sup> POCTAA s. 8(1). Clause 26 of *Prevention of Cruelty to Animals Regulation 2012* (NSW) ("POCTAR") does in large measure embrace the "five freedoms". It applies to the conduct of "animal trades". This regulation is addressed later in this Chapter.

<sup>609</sup> AWA UK s. 9(1).

<sup>610</sup> AWA UK s. 9(2).

<sup>611</sup> AWA UK s. 32(2).

<sup>612</sup> Terms of Reference B.1.

<sup>613</sup> Terms of Reference C.1(c).

8.21 There are a number of very significant welfare issues which confront greyhounds in this State. Lack of socialisation, inappropriate housing and substandard treatment for illness and injury are all examples of a failure to afford greyhounds one or more of the five freedoms. Unlike the situation in the United Kingdom, the NSW Parliament has not legislated to give statutory force to the basic welfare framework reflected in the five freedoms. In the case of greyhounds, the application of the five freedoms is largely discretionary. The Commission considers that, if the industry is to continue, then this state of affairs must be addressed. The serious welfare problems exposed by the Commission during the course of this inquiry cannot be left to the industry to address on a discretionary basis. There must be enforceable standards and, at a high level, the starting point is the POCTAA.<sup>614</sup>

## The POCTAA – General cruelty offences

8.22 The POCTAA defines “cruelty” in the following terms:

For the purposes of this Act, a reference to an act of cruelty committed upon an animal includes a reference to any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably:

- (a) beaten, kicked, killed, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified or infuriated,
- (b) over-loaded, over-worked, over-driven, over-ridden or over-used,
- (c) exposed to excessive heat or excessive cold, or
- (d) inflicted with pain.<sup>615</sup>

8.23 It defines “aggravated cruelty” in the following terms:

For the purposes of this Act, a person commits an act of aggravated cruelty upon an animal if the person commits an act of cruelty upon the animal or (being the person in charge of the animal) contravenes section 5(3) in a way which results in:

- (a) the death, deformity or serious disablement of the animal, or
- (b) the animal being so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive.<sup>616</sup>

8.24 Section 5 of the POCTAA creates the offences of ‘committing an act of cruelty upon an animal’ and ‘authorising the commission of an act of cruelty’ by a person in charge of an animal. The person in charge of an animal has particular duties:

A person in charge of an animal shall not fail at any time:

- (a) to exercise reasonable care, control or supervision of an animal to prevent the commission of an act of cruelty upon the animal,
- (b) where pain is being inflicted upon the animal, to take such reasonable steps as are necessary to alleviate the pain, or
- (c) where it is necessary for the animal to be provided with veterinary treatment, whether or not over a period of time, to provide it with that treatment.<sup>617</sup>

8.25 The maximum penalty for committing an act of cruelty upon an animal is \$27,500 in the case of a corporation; and \$5,500, or imprisonment for six months, or both, in the case of an individual.

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<sup>614</sup> The need for a detailed and enforceable Code of Practice is addressed further below.

<sup>615</sup> POCTAA s. 4(2).

<sup>616</sup> POCTAA s. 4(3).

<sup>617</sup> POCTAA s. 5(3).

- 8.26 The Commission heard evidence of cruel practices being perpetrated on greyhounds.
- 8.27 Dr Leonie Finster is a veterinary surgeon who gave evidence to the Commission.<sup>618</sup> Between 1980 and 2014, Dr Finster was a partner in a veterinary practice in Beaudesert, Queensland. She estimated that approximately 25% of her work involved greyhound medicine and surgery. In 1981 Dr Finster obtained a trainer's licence from the Queensland Greyhound Racing Board. Until 2000, she trained and raced a number of greyhounds. Dr Finster had also worked intermittently as a veterinary practitioner at metropolitan greyhound race meetings in Brisbane. After the sale of her practice in 2014, Dr Finster maintained a continuing interest in greyhound medicine and, in particular, the lack of appropriate pain relief provided to greyhounds with significant track injuries.<sup>619</sup> She had also owned and trained greyhounds in the past.
- 8.28 Dr Finster told the Commission that some owners and trainers used sclerosing agents,<sup>620</sup> blistering,<sup>621</sup> pin-firing<sup>622</sup> and needling<sup>623</sup> to 'treat' their greyhounds.<sup>624</sup> The first three cause, and are intended to cause, tissue scarring. Each causes considerable pain to the animal. None have any scientific basis for their use.<sup>625</sup> Pin-firing is a separate offence under the POCTAA.<sup>626</sup> It carries a penalty of \$27,500 in the case of a corporation and \$5,500 or imprisonment for six months, or both, in the case of an individual.
- 8.29 Section 6 of the POCTAA creates an offence of committing an act of aggravated cruelty upon an animal. The maximum penalty for the offence is \$110,000 in the case of a corporation and \$22,000 or imprisonment for two years, or both, in the case of an individual.

### The POCTAA – Specific cruelty offences

- 8.30 The POCTAA prohibits particular conduct which is inherently cruel. Apart from live baiting offences (discussed below), the offences are as follows:
- (a) the administration of poisons to domestic animals (the maximum penalty is \$110,000 in the case of a corporation and \$22,000 or imprisonment for two years, or both, in the case of an individual);<sup>627</sup>
  - (b) the use of certain electrical devices on animals other than prescribed species (the maximum penalty for this offence is \$27,500 in the case of a corporation and \$5,500 or imprisonment for six months, or both, in the case of an individual; the same penalty applies to each of the offences listed below);<sup>628</sup>
  - (c) tethering animals;<sup>629</sup>
  - (d) abandoning animals;<sup>630</sup>
  - (e) carrying out certain procedures on particular breeds of animals, such as docking the tail of a horse or performing a clitoridectomy on a greyhound;<sup>631</sup>
  - (f) riding certain animals;<sup>632</sup>

<sup>618</sup> 18 November 2015: T589 - T621

<sup>619</sup> See Ex U (17-19 November 2015).

<sup>620</sup> 18 November 2015: T602.41-43.

<sup>621</sup> Ibid: T602.31-32.

<sup>622</sup> Ibid: T603.37-43; T604.6-11.

<sup>623</sup> Ibid: T605.33-42.

<sup>624</sup> See also Dr Jade Norris, 19 November 2015: T667.15-17.

<sup>625</sup> Dr Leonie Finster, 18 November 2015, T602.34-39.

<sup>626</sup> POCTAA s. 21A.

<sup>627</sup> POCTAA s.15.

<sup>628</sup> POCTAA s.16.

<sup>629</sup> POCTAA s. 10.

<sup>630</sup> POCTAA s. 11.

<sup>631</sup> POCTAA s. 12.

<sup>632</sup> POCTAA s. 13.

- (g) failing to take certain steps such as reporting by a driver of a vehicle which strikes and injures certain animals;<sup>633</sup>
- (h) keeping certain spurs or implements designed for fighting;<sup>634</sup>
- (i) baiting or fighting of animals;<sup>635</sup>
- (j) bull fighting;<sup>636</sup>
- (k) trap shooting;<sup>637</sup>
- (l) using, managing or controlling particular premises as a game park;<sup>638</sup>
- (m) performing certain animal catching activities;<sup>639</sup>
- (n) firing (ie. using a thermal stimulus to the leg of an animal with the intention of causing tissue damage and scarring);<sup>640</sup>
- (o) tail nicking of horses;<sup>641</sup>
- (p) steeple chasing and hurdle racing;<sup>642</sup>
- (q) selling severely injured animals;<sup>643</sup> and
- (r) setting certain traps in particular areas.<sup>644</sup>

## The POCTAA – Live baiting offences

8.31 There are two offences created by s. 21 of the POCTAA which deal with live baiting. Sub-sections 21(1)(d) and (e) provide as follows:

(1) A person who:

...

- (d) uses an animal as a lure or kill for the purpose of bleeding greyhounds or in connection with the trialing, training or racing of any coursing dog, or
- (e) keeps or is in charge of an animal for use as a lure or kill for the purpose of bleeding greyhounds or in connection with the trialing, training or racing of any coursing dog,

is guilty of an offence.

8.32 The maximum penalty for these offences is the same as that which applies in respect of the offence of aggravated cruelty. The maximum penalty is \$110,000 in the case of a corporation; or \$22,000, or imprisonment for two years, or both, in the case of an individual.

8.33 Section 21(2C) of POCTAA creates an evidentiary presumption. It provides:

In any proceedings under subsection (1)(e), evidence that the defendant was in charge of an animal of a species prescribed by the regulations at a place used for the trialing, training or racing of any coursing dog is prima facie evidence that the defendant kept or was in charge of an animal for use as a lure or kill for the purpose referred to in that subsection.

<sup>633</sup> POCTAA s. 14.

<sup>634</sup> POCTAA s. 17.

<sup>635</sup> POCTAA s.18.

<sup>636</sup> POCTAA s.18A.

<sup>637</sup> POCTAA s. 19.

<sup>638</sup> POCTAA s. 19A.

<sup>639</sup> POCTAA s. 20.

<sup>640</sup> POCTAA s. 21A.

<sup>641</sup> POCTAA s. 21B.

<sup>642</sup> POCTAA s. 21C.

<sup>643</sup> POCTAA s. 22.

<sup>644</sup> POCTAA s. 23.

8.34 The “species prescribed” by the POCTAR are diverse. Regulation 28 of the POCTAR provides:

**Evidence of keeping or being in charge of animal for lure or kill for coursing dog**

All species of animals that are not species commonly used as coursing dogs are prescribed for the purposes of section 21(2C) of the Act.

### **RSPCA Australia’s proposals for reform**

8.35 RSPCA Australia made a number of submissions to the NSW Legislative Council’s 2014 Select Committee on Greyhound Racing in NSW (“the Select Committee”), the Five Year Statutory Review of the *Greyhound Racing Act 2009* (“the Five Year Statutory Review”) and to the Commission, addressing many issues of relevance to the welfare of greyhounds and how matters might be improved.

8.36 In relation to the POCTAA, RSPCA Australia suggested that it should be amended to facilitate the investigation and prosecution of those who might be involved in live baiting. By way of summary, RSPCA Australia suggested that:

- Section 21(d) should be amended to include dead animals.
- Section 21(1)(e) in its current form is deficient; because the evidentiary presumption created by s. 21(2C) is no more than that, an evidentiary presumption. RSPCA is still required to prove the offence beyond reasonable doubt and, in particular, the purpose referred to in the subsection or the connection between the animal and trialing, training or racing. RSPCA had investigated many complaints where small animals were kept at a place used for the trialing, training or racing of greyhounds. RSPCA Australia believed that the animals were intended to be used as live baits. However, more often than not, it considered that this could not be proven beyond reasonable doubt. Apart from seizing the animals, no action was taken.
- Section 21(1)(e) should be amended to prohibit the keeping of any animal of a prescribed species at any place used for the trialing, training or racing of coursing dogs under any circumstances.
- Sections 21(1)(e) and 21(2C) should be amended to include the words “housing” and “kennelling”.

8.37 As to the amendment suggested in respect of s. 21(1)(d) of the POCTAA, namely, that it include the words “live or dead”, RSPCA Australia suggested that prohibiting the use of dead animals might lessen the temptation for live animals to be substituted. This concern is supported by evidence given before the Commission. One public trainer eventually admitted to the Commission that he regularly used live rabbits and also used dead rabbits from time to time. Many dead rabbits were found by RSPCA NSW during an inspection of his property in early 2015. The trainer told RSPCA NSW that he always wrung the necks of the live rabbits which were delivered to his property before they were used in his bull-ring. He was lying but he was not prosecuted.

8.38 The use of animal carcasses and animal parts to train greyhounds does not involve an act of cruelty. However, it can adversely affect the welfare of a greyhound in the sense that it may subsequently limit the prospects that it will be rehomed.

8.39 Dr Karen Dawson is a veterinary practitioner. She graduated from the University of Queensland in 1994. She is a member of the Australian Veterinary Association and its Policy Council, a committee member of the Australian Greyhound Veterinary Association and a member of the Australian Veterinary Behaviour Special Interest Group. Dr Dawson is the former President of

the Greyhound Rehoming Centre Inc. Following the exposure of live baiting in Queensland, Dr Dawson provided expert advice to Racing Queensland and the Queensland Greyhound Racing Industry Commission of Inquiry.<sup>645</sup> Dr Dawson was also a contributor to the Working Dog Alliance Report “Review & Assessment of Best Practice Rearing, Socialisation, Education & Training Methods for Greyhounds in a Racing Context” which was produced for GRNSW in July 2015.

8.40 Dr Dawson’s is an expert in greyhound behaviour, the treatment of behavioural disorders in greyhounds, and rehoming. Dr Dawson told the Commission that the use of animals and animal carcasses may significantly increase predatory aggression.<sup>646</sup> Dr Dawson played a number of videos to the Commission to demonstrate her point. They showed greyhounds which were being assessed by her for rehoming. The behaviours exhibited by these greyhounds towards her pet spaniel graphically depicted examples of predatory aggression. She had this to say about predatory aggression:

Predatory aggression - it differs to prey drive and I’ll talk about this a little bit later. But prey drive is just chasing. So, you know, most dogs will have prey drive but it doesn’t necessarily have to end in a fight whereas predatory aggression does and it doesn’t necessarily mean kill to eat. As opposed to fear aggression with, as we saw with Ringo, that’s a negative emotional state, whereas predatory aggression is positive. It’s fun. It’s the only form of aggression that is fun for the dogs and so it’s very reinforcing that they will learn this behaviour. And whatever a dog does is based around genetics, learning and the current environment. So because, it is an enjoyable activity, it’s very reinforcing to do [sic] the dogs.<sup>647</sup>

8.41 Some of the greyhounds in Dr Dawson’s videos also had scarring consistent with having been trained with live animals. It is clear that, if the greyhounds in the videos had not been restrained and muzzled, Dr Dawson’s spaniel would have been mauled or worse. None of these greyhounds were suitable for placement into new homes. As has already been noted, Dr Dawson was of the opinion that the use of dead animals affects greyhounds in the same way as live animals: they increase predatory aggression. In a significant number of greyhounds, this behaviour cannot be changed. She said, referring to one of her videos: “That dog would have to be managed for the rest of its life, but it’s a liability”.<sup>648</sup>

8.42 Rehoming, and the lack of rehoming opportunities, is a major welfare problem in the greyhound racing industry. In fact, apart from overbreeding and wastage, it is one of the most significant welfare issues. If a greyhound cannot be rehomed it will be destroyed. Anything which reduces the possibility that a greyhound will be rehomed is undesirable. The Commission considers that, in the case of small animals, whether alive or dead, their use to train greyhounds should be unlawful.

8.43 The use of animal carcasses and animal parts is now an offence under GRNSW’s Rules. It can lead to a minimum disqualification of ten years and/or a fine. GRNSW’s new “Lure Policy” commenced on 20 April 2015. It prohibits the use of any live animal, animal carcass or part of an animal as a lure in greyhound training, education or racing. When introduced, the use of tanned and professionally processed animal skins for the purposes of trialing or educating greyhounds was permitted. There is no longer such an exception. From 1 December 2015, all lures used in training, education or racing must be made of synthetic materials.<sup>649</sup>

8.44 The Commission is aware of many instances where the Rules were simply ignored by industry participants. The Commission considers that there is a significant risk that certain industry

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<sup>645</sup> Ex N (17-19 November 2015), p. 2.

<sup>646</sup> 18 November 2015: T576.42-577.3.

<sup>647</sup> Ibid: T572.16-25.

<sup>648</sup> Ibid: T578.43-44.

<sup>649</sup> This is now reflected in LR 86A.

participants will, from time to time, ignore GRNSW's Lure Policy. There needs to be an additional incentive. Those who use animals, alive or dead, for the purpose of training greyhounds should also face the prospect of a criminal conviction, imprisonment and a significant fine.<sup>650</sup> Section 21(1)(d) of the POCTAA should be amended as suggested by RSPCA Australia.

8.45 As to RSPCA Australia's submissions in relation to s. 21(1)(e) of the POCTAA, they would, if accepted, result in the following amended subsection:

(1) A person who:

...

(e) keeps or is in charge of any animal of a prescribed species at any place used for the housing or kennelling, training, trialing, training or racing of coursing dogs,

is guilty of an offence.

8.46 The expression "prescribed species" is currently contained in s. 21(1)(e). It captures the keeping of any animal (eg. cattle or other dogs) at a place used for trialing, training or racing whether or not there is any likelihood at all that the animal could be, or would be, used as a live bait. The Commission considers that this is inappropriate.

8.47 The Commission notes that on 20 April 2015, GRNSW amended the Rules to prohibit the possession of animals which "might reasonably be capable of being, or likely to be, used as bait, quarry, or lure to entice or excite or encourage a greyhound to pursue it".<sup>651</sup> Absent the word "reasonably", such wording, or wording similar to it, provides a workable description of the small animals which are at risk.

8.48 The Select Committee recommended that Government review s. 21 of the POCTAA to include "kennels" so as to ensure that allegations of live baiting could be properly investigated.<sup>652</sup> The recommendation was supported by Government.<sup>653</sup> It should be noted, however, that if s. 21(1)(e) is amended to refer to "kennels" or, more particularly, to include the words "housing and kennelling", this would catch owners of greyhounds who house or kennel greyhounds on their properties but have them trialed or trained elsewhere. Such owners would be precluded from housing domestic animals such as rabbits, piglets, cats or chickens. Some might say that such a prohibition is unreasonable.

8.49 The Commission does not agree.

8.50 Those who have their greyhounds trialed or trained elsewhere, but who house them at their property, are still capable of using live baits. One Owner-Trainer whose greyhounds were kept adjacent to his house told the Commission that, from time to time, he would throw a live rabbit over the fence to his young greyhounds to excite them. The greyhounds were trained and trialed offsite. If live baiting is to be stamped out, at least to the extent that it is practically possible to do so, those who keep greyhounds for the purpose of racing them cannot be permitted to keep small animals at the same location. The prohibition must be absolute. Industry participants who wish to keep small animals will need to house or kennel their greyhounds elsewhere.

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<sup>650</sup> The Commission notes that a number of individuals exposed by the *Four Corners* program have been convicted of offences under s. 21 of the POCTAA. Two are currently serving significant terms of imprisonment. John Gauchi, of Box Hill, was sentenced to a term of imprisonment of 18 months with a non-parole period of 12 months. Ian Morgan, of Telopea, was sentenced to a term of imprisonment of 12 months with a non-parole period of 9 months. Both pleaded guilty. There are further prosecutions pending. One such prosecution is for offences against s. 530 of the *Crimes Act 1900*. Offences against s. 530 carry a maximum term of imprisonment of 5 years.

<sup>651</sup> R 86B(1)(b).

<sup>652</sup> Select Committee First Report, Recommendation 17, p. 112.

<sup>653</sup> Government Response to Select Committee First Report (September 2014).

8.51 Currently, the Rules create an exemption in relation to the keeping of live animals. R 86C(5) provides as follows:

A person shall not be in breach of Rule 86B(1)(b) where the animal is kept on or at the premises as a domesticated pet or is kept for rural or agricultural purposes with prior notification to and approval from the Controlling Body. For the purpose of this sub-rule, notification must be in the manner and form required by the Controlling Body for this exclusion to apply.

8.52 This exclusion cannot continue. It has the capacity to be used by industry participants as a means of obtaining a licence to keep small animals which will then be used as live baits. Nevertheless, the wording proposed by RSPCA Australia for an amended s. 21(e) is problematic for two reasons.

8.53 First, there are a number of participants in the industry, and the wider community, who care for greyhounds that no longer race; because they have been retired as pets or have been rehomed. There should not be any restriction imposed on such persons from keeping small animals, provided there are no other greyhounds present which continue to race.

8.54 Second, the proposed amendment extends to premises at which any coursing dogs are housed or kennelled. There are many breeds of dog which are commonly referred to as “coursing dogs” but do not engage in lure coursing. Some do engage in lure coursing. The sport is regulated by the Australian National Kennel Council Ltd (“ANKC Ltd”), of which Dogs NSW (formally called the Royal NSW Canine Council Ltd) is a member body.<sup>654</sup> To complicate matters further, all dogs registered with ANKC Ltd, whatever the breed, are eligible to compete in lure coursing tests and trials.<sup>655</sup> There are two streams of dogs with two separate sets of titles. There is the “sighthound” stream, for which the eligible breeds are Afghan Hound, Azawakh, Borzoi, Greyhound, Ibizan Hound, Irish Wolfhound, Pharaoh Hound, Saluki, Scottish Deerhound, Sloughi, Whippet, Italian Greyhound, Basenji and Rhodesian Ridgeback.<sup>656</sup> The “coursing ability” stream is open to all other breeds registered with ANKC Ltd.<sup>657</sup>

8.55 Whilst it is arguable that the expression “coursing dogs” refers only to the sighthound breeds named in the previous paragraph, and not to dogs generally, the amendment to s. 21(e) proposed by RSPCA Australia is unworkable. Although s. 21(1)(e) in its current form would necessarily exclude persons, dogs and premises not actually involved in coursing, the proposed amended section would not be so restricted. Owners of Afghan Hounds or Whippets, for example, would not be permitted to house a pet cat even if they and their dogs had no involvement in coursing.

8.56 The Commission considers that there is a need to deal with small animals kept at premises where greyhounds are housed or kennelled. However, it must be confined to premises which house or kennel ‘registered’ greyhounds. Once registration ceases and they are kept as pets or rehomed there should not be such a restriction.

8.57 In summary, the Rules governing registration and de-registration under the *Greyhound Racing Act 2009* are as follows.

8.58 The results of a service of a greyhound bitch must be notified to GRNSW.<sup>658</sup> Litters are required to be registered under the Rules.<sup>659</sup> Greyhounds are not eligible to compete or be used for

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<sup>654</sup> Dogs NSW website, “About – History”: <<http://www.dogsnsw.org.au/about-dogs-nsw/history.html>> (accessed 14 May 2016).

<sup>655</sup> Australian National Kennel Council Ltd, *Rules for the conduct of Lure Coursing Trials, version effective 1/1/15* (“ANKC Coursing Rules”), R 5.7: <[http://ankc.org.au/media/1093/1809lure\\_coursing\\_2015v2.pdf](http://ankc.org.au/media/1093/1809lure_coursing_2015v2.pdf)> (accessed 12 March 2016).

<sup>656</sup> ANKC Coursing Rules, R 5.3, R 5.4.

<sup>657</sup> ANKC Coursing Rules, R 5.7, R 5.6.

<sup>658</sup> The Rules R 136.

<sup>659</sup> The Rules R 137.

breeding purposes until registered/named.<sup>660</sup> At any time after the notification of the result of a service, the last registered owner of the greyhound at the relevant time must notify GRNSW within ten working days if that greyhound has been transferred to another owner, retired as a pet or a breeding greyhound, transferred to an adoption program, exported or surrendered to another agency.<sup>661</sup>

8.59 LR 106(1) provides that, in the event that a registered greyhound is notified to GRNSW as having become subject to retirement as a pet, transferred to an adoption program, or surrendered to another agency, it ceases to be registered under the Rules.<sup>662</sup> It must then be registered with the relevant local council in accordance with the CAA.<sup>663</sup>

8.60 A greyhound which is registered in accordance with the Rules is exempt from the registration requirements of the CAA.<sup>664</sup> This creates an anomaly which is addressed later in this Chapter. A retired greyhound owned by a person registered with GRNSW and notified as being in that person's care does not cease to be registered under the Rules. Further, it is exempted from the requirement to be registered under the CAA.<sup>665</sup> The recommendations which follow assume that this anomaly will be corrected.

8.61 The Commission did not receive any information suggesting that live baiting is occurring in relation to lure coursing. Those who engage in lure coursing do not do so for financial gain. According to Dogs NSW:

Lure coursing aims to preserve and develop the coursing skills inherent in sighthounds and to demonstrate that they can perform the functions for which they were originally bred. The hounds chase plastic bags on a course laid out to simulate escaping game. The plastic bags are pulled around on a nylon string course, propelled by a hand controlled motor.<sup>666</sup>

8.62 The Commission accepts, nevertheless, that, because the lures used in lure coursing are meant to simulate live prey, there is a risk that dogs which participate in the sport may be trained or trialed using small, live animals. However, the trigger point for the lawful keeping of small animals on a property which houses or kennels coursing dogs other than greyhounds cannot be registration under the CAA. Coursing dogs other than greyhounds are not exempted from registration whilst they are involved in the sport.<sup>667</sup>

8.63 The Commission considers that there should be a mandatory requirement that dogs which engage in the sport of lure coursing are registered as such on the Companion Animals Register, at least during such period or periods of time as they are involved in lure coursing. A failure to register them as coursing dogs should be a criminal offence under the CAA. The penalty should be the same as that which applies in respect of a failure to register a companion animal (discussed below).<sup>668</sup> Because coursing dogs may engage in lure coursing at various times during their lifecycle, notification under s. 11 of the CAA should be adopted as the means by which a coursing dog obtains the status of a coursing dog under the CAA. The owner of a coursing dog which no longer engages in lure coursing should also be required to give notice pursuant to s. 11 of the CAA. The CAR will require amendment to make each of these events a "notifiable event"

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<sup>660</sup> The Rules R 115(1).

<sup>661</sup> The Rules R 106(3)(a) and within two working days if that greyhound has been humanely euthanased by a veterinary surgeon or deceased per R 106(3)(b).

<sup>662</sup> The Rules LR 106(1).

<sup>663</sup> The Rules LR 106(2).

<sup>664</sup> CAR cl. 16(g).

<sup>665</sup> LR 106(4). This is because its registration under the Rules continues.

<sup>666</sup> Dogs NSW website, "What is lure coursing?": <<http://www.dogsnsw.org.au/activities-a-events/lure-coursing.html>> (accessed 14 May 2016).

<sup>667</sup> CAR cl. 16(g).

<sup>668</sup> CAA s. 9(1).

under the CAR. If this recommendation is accepted by Government then it may wish to consult with ANKC Ltd. As the regulator of the sport ANKC Ltd may consider it appropriate to ensure that coursing dogs that are involved in lure coursing do not trial, train, or race unless they have the status of a registered coursing dog.

## The Commission's recommendations

8.64 On 15 May 2015, a NSW Joint Select Committee on Companion Animal Breeding Practices was established ("The Joint Select Committee"). The Joint Select Committee delivered a report on 27 August 2015 in which it made a number of recommendations. They included a recommendation that Government review all animal welfare and regulatory offences and report on recommended changes by 1 September 2016.<sup>669</sup> Government partly supported the recommendation,<sup>670</sup> although if a review is to take place it will not occur for some time. The Commission considers that the recommendations referred to below should not await a further review. There are deficiencies in the POCTAA and the POCTAR which need to be addressed as soon as possible.

8.65 The Commission recommends the following amendments to the POCTAA and the POCTAR:

- repeal of cl. 28 of the POCTAR - as the type of animal, namely, one with particular characteristics, should be specified in the POCTAA;
- amendment of s. 21(1)(d) of the POCTAA to refer to both live and dead animals;
- amendment of s. 21(1)(e) of the POCTAA to make clear that the keeping of small animals is an offence irrespective of purpose;
- addition of s. 21(1A) to the POCTAA to define the meaning of "coursing dog" for the purpose of s. 21(1)(e);
- addition of s. 21(1B) to the POCTAA to require coursing dogs that will train, trial or race to be registered;
- addition of s. 21(1C) to the POCTAA to impose an obligation on the owner of a coursing dog before it is trialled, trained or raced;
- addition of s. 21(1D) to the POCTAA to create an offence of failing to register a coursing dog;
- addition of s. 21(1E) to the POCTAA to create an offence of trailing, training or racing an unregistered coursing dog;
- addition of s. 21(1F) to the POCTAA to define "animal" for the purpose of ss. 21(1)(e) and 21(2B);<sup>671</sup>
- amendment of s. 21(2B) of the POCTAA to refer to both live and dead animals; and
- repeal of s. 21(2C) of the POCTAA.<sup>672</sup>

8.66 The recommended amendments to s. 21(1) to 21(1)(E) of the POCTAA appear below:

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<sup>669</sup> Joint Select Committee Report 2015, Recommendation 28, p. 84.

<sup>670</sup> Government Response to Joint Select Committee Report 2015, p. 7.

<sup>671</sup> The Commission considers that it is unnecessary to define "animal" in s. 21(1)(d) of the POCTAA. The offence in that section turns on the use of an animal and it is possible that a person may attempt to use an animal as live bait even though it is not, in fact, capable of being so used.

<sup>672</sup> In light of the recommended amendment to s. 21(1)(e) there is no longer any need for a presumption as to the purpose of the defendant.

(1) A person who:

...

(d) uses an animal, live or dead, as a lure or kill for the purpose of bleeding greyhounds or in connection with the trialling, training or racing of any coursing dog, or

(e) keeps or is in charge of a live animal at any place used for the housing or kennelling, trialling, training or racing of any coursing dog,

is guilty of an offence.

Maximum Penalty: 1,000 penalty units in the case of a corporation or 200 penalty units or imprisonment for 2 years, or both, in the case of an individual.

(1A) For the purpose of subsection 1(e) coursing dog means:

(a) a greyhound which is registered in accordance with the rules made in relation to greyhound racing under the *Greyhound Racing Act 2009*,<sup>673</sup> and

(b) any other coursing dog which is registered, or should have been registered, as required by (1B).

(1B) A coursing dog, other than a greyhound, must be registered under the [Act governing the regulator] prior to any, trialling, training or racing.

Maximum penalty: 50 penalty units.

(1C) The owner of a coursing dog which fails to register it as required by subsection (1B) is guilty of an offence.

Maximum penalty: 50 penalty units.

(1D) A person shall not trial, train or race any coursing dog, other than a greyhound, unless it is registered in accordance with the [Act governing the regulator].

Maximum penalty: 50 penalty units.

(1E) For the purpose of subsection 1(e) and (2B) animal means an animal which is capable of being used as a bait, quarry, or lure to entice, excite or encourage a coursing dog to chase.

8.67 Section 21(2B) of the POCTAA should be amended to read as follows:

In any proceedings under subsection 1(d) evidence that the defendant was in charge of a live animal or in possession of a dead animal that appeared to have been used as a lure or kill in the manner referred to in that subsection is prima facie evidence that the defendant used the animal as a lure or kill in that manner.

8.68 Section 21(2C) of the POCTAA should be amended to read as follows:

21(2C) In any proceedings under subsection 1(e), evidence that the defendant kept or was in charge of a live animal at any place used for the trialling, training or racing of any coursing dog which animal was capable of being used as a bait, quarry or lure to entice, excite or encourage the coursing dog to chase it is prima facie evidence that the defendant kept or was in charge of an animal for use as a lure or kill for the purpose referred to in that subsection.

8.69 RSPCA Australia suggested a number of further legislative measures, which it considers would assist with ridding the industry of live baiting.<sup>674</sup> They were:

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<sup>673</sup> The wording of this proposed amendment assumes that Government will accept the Commission's recommendation that greyhounds should at all times be registered under the CAA. This is addressed later in this Chapter. Pursuant to R 106(3) of the Rules the last registered owner of a greyhound must notify GRNSW within 10 working days if that greyhound has, *inter alia*, been retired as a pet or as a breeding greyhound, or has been transferred to an adoption program, exported, or surrendered to another agency. Pursuant to LR 106(1), the greyhound ceases to be registered once notification has been received by GRNSW.

- Creating new offences under the Crimes Act, including significantly greater penalties (imprisonment and fines) for baiting and luring offences. The Commission does not consider that this is necessary. The penalties for live baiting offences under the POCTAA are significant. They are the same as the penalty for aggravated cruelty. It is undesirable to further fragment animal welfare regulation by creating offences which to a large measure would replicate those contained in the POCTAA. It might be thought desirable to have the worst category of cases dealt with by a jury, rather than summarily so that the community can have a say. However, it remains the case that in Australia, juries have no direct role in the punishment of offenders. Although they can, and sometimes do, make a recommendation for leniency, the trial judge is not bound by the jury's view although he or she must treat such a view with respect.<sup>675</sup>
- Creating an offence under the POCTAA of being present at a place where live baiting or the use of dead animals is occurring. The Commission does not consider that such an offence is appropriate. Mere presence whilst another commits a crime is not a proper basis for the imposition of criminal liability. Participation at some level is required. The POCTAA already contains provisions which deal with secondary offenders.<sup>676</sup> The Commission considers that RSPCA Australia's concern is accommodated by the recommendation which follows. Further, the Rules have recently been amended to create an offence of failing to use reasonable endeavours to prevent a greyhound pursuing or attacking any live animal, animal carcass or any part of an animal.<sup>677</sup> The offence is not limited to the owner of the greyhound. The penalty is disqualification for a period of not less than ten years plus a penalty of up to \$22,000.
- Creating an offence of failing to report live baiting.<sup>678</sup> The Commission considers that such an offence should be introduced into the POCTAA. Live baiting is extremely difficult to detect and, for too long, the industry has tolerated the practice. The Commission has no doubt that many more industry participants had observed the practice at some point or had first-hand knowledge of its occurrence than were called to give evidence in public hearings. If live baiting is to be stamped out to the extent which is practically possible, then those who become aware that live baiting is occurring, or has occurred, must play a role. If they do not, then there should be criminal consequences. The Commission recommends that the POCTAA should be further amended to create an offence of failing to report live baiting. The obligation should be to report the matter to the NSW Police Force, RSPCA NSW or the AWL NSW. It is a matter for Government to determine what penalty should be imposed. However, the Commission recommends that the maximum penalty should include a term of imprisonment. The Commission notes that the Rules were recently amended to create an offence of failing to report any of the substantive live baiting offences contained in the Rules.<sup>679</sup> The penalty is disqualification for a period of not less than five years and/or a fine not exceeding \$20,000. Despite the existence of these significant penalties it remains a disciplinary offence only. The importance of reporting is such that there must be criminal liability for a failure to report.
- Creating an offence of advertising, promoting or organising live baiting of animals. The Commission notes that the POCTAA already extends to such activities.<sup>680</sup> The Rules are not

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<sup>674</sup> RSPCA, Submission 239 to the Commission dated 3 July 2015, pp. 16-17.

<sup>675</sup> *Whittaker v The King* (1928) 41 CLR 230.

<sup>676</sup> POCTAA s. 33C.

<sup>677</sup> The Rules R 86B(1)(d).

<sup>678</sup> By reason of s. 316 of the *Crimes Act 1900* (NSW) there is already a duty to report offences against s. 530, that is, offences of serious animal cruelty.

<sup>679</sup> The Rules R 86B(2). Pursuant to R 86C there are specific rules relating to Clubs and greyhound trial tracks.

<sup>680</sup> POCTAA s. 21(1).

currently coextensive. The Commission recommends that R 86B(1)(c) should be amended to extend the disciplinary offence to advertising, promoting or organising live baiting. If there is any resistance to this proposal by Greyhounds Australasia or other controlling bodies then a separate Local Rule should be introduced.

## The CA Act and CA Regulation

- 8.70 Dog ownership in New South Wales is primarily regulated by the CAA and the CAR.
- 8.71 The CAA establishes a Register of Companion Animals (“the CA Register”) and requires lifetime registration of them.<sup>681</sup> All dogs (including greyhounds) and cats are companion animals.<sup>682</sup> They must be identified by the implantation of a microchip of a type or specification approved by the Director General of the Division of Local Government, Department of Premier and Cabinet (“the Director General”), and the implantation must be carried out by a veterinary practitioner or a person who has been accredited as an authorised identifier of companion animals.<sup>683</sup> Microchipping must occur by the time the animal is twelve weeks old.<sup>684</sup> Companion animals must also be registered on the CA Register from the time the animal is six months old.<sup>685</sup>
- 8.72 An owner of an animal is guilty of an offence if there is a failure to microchip as required by the CAA and the CAR. The maximum penalty \$5,500 in the case of a dangerous, menacing or restricted dog (as defined) and is \$880 in the case of animals that are not.<sup>686</sup> A failure to register a companion animal carries a maximum penalty of \$6,600 in the case of a dangerous, menacing or restricted dog and \$5,500 in the case of animals which are not.<sup>687</sup>
- 8.73 The CAR sets out the identification information which appears on the CA Register. The information is essential for the tracking of companion animals throughout their lifecycle.
- 8.74 The identification information which appears on the CA Register is as follows:<sup>688</sup>
- (a) the unique identification number allocated to the microchip implanted in the animal in connection with the identification of the animal;
  - (b) ...the name of the authorised identifier who carried out, or supervised, the implantation of the microchip and, if the authorised identifier is accredited, their authorised identifier number;
  - (c) the date on which the animal was identified;
  - (d) the full name and residential address of the owner of the animal together with any other available contact details for the owner;
  - (e) the address of the place at which the animal is ordinarily kept;
  - (f) the name of the council of the area in which the animal is ordinarily kept;
  - (g) the type of animal (dog or cat), and the breed of the animal;
  - (h) the animal’s date of birth (known or approximate);
  - (i) the animal’s gender;
  - (j) the animal’s colour and details of any unusual or identifying marks on the animal.

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<sup>681</sup> CAA s.74.

<sup>682</sup> CAA s. 5.

<sup>683</sup> CAR cl. 5, cl. 6.

<sup>684</sup> CAA s. 8(1).

<sup>685</sup> CAA s. 9(1).

<sup>686</sup> CAA s. 8(3).

<sup>687</sup> CAA s. 9(1).

<sup>688</sup> CAR cl. 8.

- 8.75 Owners are required to notify the Director General when any of the following happens:<sup>689</sup>
- (a) any change occurs in the registration information or identification information for the animal (notification must be given within 14 days after the change occurs);
  - (b) the making or revocation of a declaration by a court that the animal (being a dog) is a dangerous dog or a menacing dog;
  - (c) the animal dies;
  - (d) the animal has been missing for more than 72 hours; or
  - (e) the animal has been found after having been reported missing.
- 8.76 Failure to notify any of the changes or events referred to above is an offence. The maximum penalty in the case of animals which are not dangerous, menacing or restricted dogs is \$880. For dangerous, menacing or restricted dogs, the maximum penalty is \$5,500.
- 8.77 The CAA and the CAR are concerned with regulating the management of companion animals rather than setting minimum standards of animal welfare. Nevertheless, the keeping of lifecycle tracking records can greatly benefit the animal. Stray dogs and cats have a greater chance of being returned to their owners if the owner and their location can be immediately established.
- 8.78 From 1 January 2011, the Rules required that all greyhounds whelped in Australia after that date had to be microchipped.
- 8.79 The CAR was amended in June 2011 to accommodate the fact that greyhounds were being identified in this way by GRNSW.
- 8.80 As noted above, greyhounds registered in accordance with the Rules, namely “registered racing greyhounds”, are exempt from the identification and lifetime registration requirements of the CAA.<sup>690</sup>
- 8.81 Under the CAR, greyhounds are “Category 5 companion animals”, being greyhounds identified on a voluntary basis by the implantation of a microchip that are, or have been, registered in accordance with the Rules. The amendment of the CAR to exclude greyhounds occurred, apparently, to avoid the duplication of the registration of racing greyhounds. It occurred on the understanding that GRNSW maintained its own database in which the identification information required by the CAR would be stored.
- 8.82 Microchipping of greyhounds is carried out by GRNSW integrity officers who have undergone formal training to receive a nationally recognised qualification in the implantation of microchip identification devices in dogs. Microchipping forms part of the identification protocols for a greyhound which also include sex, colour, markings and ear branding. Only integrity officers approved by GRNSW in accordance with the Rules are permitted to ear brand and microchip greyhounds in NSW. GRNSW claims that each integrity officer is annually assessed by an approved veterinarian as part of quality assurance standards.<sup>691</sup> Microchipping has not replaced ear branding.<sup>692</sup> Greyhounds must also be branded on the left ear with five alpha characters.<sup>693</sup> Until 2011, identification at race meetings occurred on the basis of ear brands or tattoos. Now greyhounds are identified using a combination of microchips and ear brands.<sup>694</sup>

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<sup>689</sup> CAA s.11(1).

<sup>690</sup> CAR cl. 12, cl. 16(g).

<sup>691</sup> GRNSW website, “Greyhound Identification”: <<http://www.thedogs.com.au/DPage.aspx?id=276>> (accessed 14 May 2016).

<sup>692</sup> The Rules R 111A.

<sup>693</sup> GRNSW website, “Greyhound Identification”: <<http://www.thedogs.com.au/DPage.aspx?id=276>> (accessed 14 May 2016).

<sup>694</sup> Anthony O’Mara, 17 February 2016: T800.23-35.

8.83 It might be said that there is not much purpose in microchipping greyhounds if they are not registered on a database which is openly accessible to those who would have access to the CA Register.

8.84 When a greyhound ceases to be a registered as a racing greyhound, it was intended that it would automatically lose its exemption from the identification and lifetime registration requirements of the CAA. It would no longer be a registered greyhound for the purpose of the exemption in cl. 16 of the CAR.

8.85 However, the Rules give rise to considerable uncertainty.

8.86 Local Rule 105 provides:

A registered person shall within 3 working days of a greyhound coming pursuant to or leaving the person's care or custody, give notice to the Controlling Body of that occurrence.

8.87 Rule 106(3) provides:

At any time after the notification of the result of a service pursuant to R136, the last registered owner of the greyhound at the relevant time, shall, notify the Controlling Body by lodging the prescribed form:

- (a) within ten working days, if that greyhound has transferred ownership, been retired as a pet or breeding greyhound, been transferred to an adoption program, exported, surrendered to another agency;
- (b) within two working days if that greyhound has been humanely euthanased by a veterinary surgeon or deceased.

8.88 Rule 106(3) raises an important question: in terms of registration, what is the status of the greyhound if no notification is given to GRNSW?

8.89 In relation to its status as a companion animal, which is exempt from the requirement to be registered under the CAA, the issue is compounded by LR 106 which provides:

**Greyhounds no longer registered for the purpose of Greyhound Racing**

- (1) In the event that a registered greyhound is notified to the relevant Controlling Body as having become subject to retirement as a pet, transferred to an adoption program or surrendered to another agency, it shall cease to be registered as a greyhound for the purposes of racing or breeding under the provisions of these rules and/or the Greyhound Racing Act as amended from time to time.
- (2) Any greyhound becoming subject to the provisions of sub-rule (1) must be registered with the relevant Council in accordance with the *Companion Animals Act 1998* as amended from time to time
- (3) A greyhound subject to these provisions of sub-rules (1) and (2) shall not be submitted for re-registration with any Controlling Body as defined in these rules.
- (4) A retired greyhound owned by a registered person as defined under these Rules and being identified on that person's Kennel Notification as a greyhound in his/her care shall be exempt from sub-rules (1), (2) and (3).
- (5) Should a trainer wish to apply for a green collar muzzle exemption for a greyhound it must be registered with a local council in accordance with the *Companion Animals Act 1998* and the provision of sub-rule (4) will not apply.

(effective 1.1.12)

8.90 The requirement under the Rules that a greyhound must be registered with a local council in accordance with the CAA is subject to GRNSW receiving notification that a registered greyhound

has become a pet, transferred to an adoption program or been surrendered to another agency. It is upon receipt of that notification that the greyhound will cease to be “registered as a greyhound”. Accordingly, the requirements of the CAA and the CAR are not engaged if notification is not received by GRNSW. That is, it remains a registered racing greyhound and is therefore exempt.

- 8.91 Further, LR 106(2) is of little practical effect. No notification would be given to GRNSW by an industry participant who had transferred the animal to an adoption program or shelter pursuant to LR 106(1)<sup>695</sup> until *after* the greyhound had been transferred. At that point the industry participant would no longer be the owner. It is at that point that the greyhound ceases to be a registered greyhound. It would only be in cases where the exemption contained in LR 106(4) did not apply that an industry participant would assume an obligation to register a greyhound under the CAA.
- 8.92 The exemption in LR 106(4) that retired greyhounds which are owned by a registered person and have been identified on that person’s ‘Kennel Notification’ as a greyhound in his/her care is problematic. There is no good reason why pets kept by a registered person should be exempt from the requirements of the CAA by a fiction that they are still registered for the purpose of engaging in the sport in some capacity. This raises the issue of whether registered greyhounds should be exempt from the CAA at all.
- 8.93 The Commission recommends that the exemption contained in R 106(4) should not continue.
- 8.94 GRNSW plays no role in processing greyhounds on the CA Register unless they are undertaking an approved retraining program. GRNSW is then a Registration Agent of the Director General,<sup>696</sup> for the purposes of processing the permanent identification, change of ownership/details and lifetime registration information of greyhounds undertaking approved retraining programs on the CA Register.<sup>697</sup> Relevantly, that is a greyhound that has successfully completed a greyhound retraining program, approved by the Chief Executive under delegation from the Director General. The “Greenhounds” program is an approved program. Greyhounds who complete the program obtain a muzzle exemption whereby they can be muzzle-free in public areas.
- 8.95 The Commission has considered whether it is appropriate for the companion animal exemption which applies to registered greyhounds to continue.
- 8.96 This issue was also considered in Milne Report.<sup>698</sup> Under the Victorian *Domestic Animals Act 1994* (Vic.) owners are exempt from registering greyhounds with local councils if they are registered with Greyhound Racing Victoria. Dr Milne noted that this created a difficulty for local government, in that councils relied upon GRV to track greyhounds within their jurisdiction. Section 74(1B) of the *Domestic Animals Act 1994* (Vic.) enabled authorised officers of local councils to request from GRV information regarding the location of greyhounds registered with GRV. However, a number of local councils had indicated that they would appreciate ready access to greyhound registration data held by GRV to assist in enforcement of relevant provisions of the Act. It was noted that RSPCA also needed ready access to this information for the purposes of the Victorian *Prevention of Cruelty to Animals Act 1986*. Dr Milne recommended that GRV implement strategies to increase facilitation and information sharing of registration and greyhound location information with local councils and RSPCA .

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<sup>695</sup> The Commission understands that it is the practice of organisations such as RSPCA to require transfer of ownership when an animal is taken into a shelter for rehoming. Such organisations are exempt from having the animals registered under CAR by reason of cl. 16(d).

<sup>696</sup> CAR cl. 13.

<sup>697</sup> Division of Local Government, Department of Premier and Cabinet, *Guidelines for Approval As A Greyhound Re-Training Program Under Clause 33B(1)(a) of the Companion Animal Regulation 2008*, October 2011, p. 4.

<sup>698</sup> Milne Report, p. 42.

- 8.97 The Commission agrees that RSPCA NSW, the AWL and authorised officers under the CAA<sup>699</sup> should be able to obtain the same information in relation to greyhounds as would be the case if there was no exemption. That is particularly so in circumstances where the requirement to register a greyhound under the CAA depends on notification of retirement to GRNSW, of which councils and RSPCA NSW might not be aware. It is also a fact that the requirement to register can be avoided by industry participants continuing to include “pet greyhound” on their kennel notifications. Unless these details are immediately accessible, those charged with enforcement of the CAA may be impeded in relation to the enforcement of its provisions.
- 8.98 The CAA creates a number of serious offences dealing with the management and control of companion animals, including greyhounds.
- 8.99 By way of example, pursuant to s. 17(1) of the CAA, a person who sets on or urges a dog to attack, bite, harass or chase any person or animal (other than vermin) is guilty of an offence whether or not actual injury is caused. The maximum penalty is \$22,000. The word “vermin” is not defined in the CAA. The ordinary meaning of the word is “wild mammals and birds which are harmful to crops, farm animals or game, or which carry disease”.<sup>700</sup> Rabbits might be regarded as vermin. Possums<sup>701</sup> and piglets are not. “Vermin” is excluded in relation to a number of other offences under the CAA.<sup>702</sup> It should be noted too that all dog attack incidents brought to a council’s attention, either verbally or in writing, need to be reported on the CA Register. Councils must then decide what further investigation and action, if any, is required based on the details of the incident in question.<sup>703</sup> This cannot be achieved if a council is unable to identify the dog or its owner.
- 8.100 The real question is whether, in the future, local councils, RSPCA NSW and the AWL should be required to access records of the regulator, or whether information concerning industry participants and their greyhounds should be on the CA Register.<sup>704</sup>
- 8.101 The Select Committee received submissions to the effect that the CAA be extended to cover the lifetime registration requirements of greyhounds. The submissions were not accepted. No recommendation to this effect was made to Government.
- 8.102 The Commission received submissions to like effect.<sup>705</sup>
- 8.103 In RSPCA Australia’s first submission to the Select Committee,<sup>706</sup> it recommended that all greyhounds including those currently registered with GRNSW should be required to be registered under the CAA, to enable independent registration records for greyhounds to be kept. This was part of a submission calling for full lifecycle tracking of greyhounds. It also recommended the development of a national tracking system such that a greyhound born in this State that moved interstate could still be tracked and the outcome for that greyhound recorded.
- 8.104 The Chief Inspector of RSPCA NSW gave evidence to the Commission concerning whether the exemption for greyhounds under the CAA should continue. His evidence was as follows:

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<sup>699</sup> Authorised local council officers and police officers.

<sup>700</sup> *Oxford Dictionary* (online ed, at 6 June 2016) ‘Vermin’.

<sup>701</sup> Possums are protected fauna under the *National Parks & Wildlife Act 1974* (NSW).

<sup>702</sup> There is no such exemption under the POCTAA for acts of cruelty which might be perpetrated upon animals which might be considered vermin. The POCTAA seeks to protect all animals from acts of cruelty.

<sup>703</sup> Division of Local Government, Department of Premier and Cabinet, *Guideline on the Exercise of Functions under the Companion Animals Act: Revised Guideline*, November 2013, p. 89.

<sup>704</sup> The Commission notes that the Joint Select Committee on Companion Animal Breeding Practices in NSW recommended that the CA Register be made partially publicly accessible online so that anyone could verify breeder details (Recommendation 15). This was supported by Government.

<sup>705</sup> See eg. RSPCA Australia Submission 239 to the Commission dated 3 July 2015.

<sup>706</sup> RSCPA Australia Submission 339 to the Select Committee, p. 7.

Q. Does RSPCA have a view on that as to whether that should continue and, if it does, what's the basis of it?

A. I think the RSPCA does have a view, and certainly my view is along the same lines, that there should be a central database that deals with the recording of microchip numbers. In the event that an animal escapes and is located by someone, regrettably there will be some confusion then as to who is the appropriate person to contact. The general situation would be you would be able to contact a vet or the local council, but then it would become that little bit more difficult because it becomes a secondary line of inquiry if that information is not readily available because it doesn't exist on the companion animals register.

Q. So you would see the companion animals register as being the register that should cover all companion animals, including greyhounds.

A. I think it's appropriate that they're all included on the companion animal register as the central point. If an additional database is maintained by Greyhound Racing New South Wales using the same microchip information, that's a good thing too, but it would be more appropriate that they're all recorded on a single register.<sup>707</sup>

- 8.105 The Commission considers that greyhounds must be registered as companion animals throughout their lifecycle. Lack of transparency has been an unfortunate feature of the industry for too long. The exemption for greyhounds facilitates it.
- 8.106 One of the Commission's principal concerns is that, to date, GRNSW's records and record keeping systems have been such that there could be no confidence that either local councils or RSPCA NSW could obtain necessary information from them. On occasions, such information would be required urgently and other organisations cannot access the information without the involvement of GRNSW. The Commission is aware of occasions where such information was conveyed to RSPCA NSW; but it should not be discretionary. It also appears to be GRNSW's policy that it will *not* provide information which might identify a greyhound to local councils or other agencies.<sup>708</sup> That remains the case whether or not the record keeping and record keeping systems of GRNSW improve, as it claims they will, or Government establishes a new regulator.
- 8.107 On 10 March 2016, GRNSW announced a new "Privacy Policy".<sup>709</sup> This may have been in response to evidence given to the Commission that no formal Memorandum of Understanding ("MOU") for the sharing of information with RSPCA NSW had ever been formalised and that the current draft of the MOU suggested that RSPCA NSW would not gain unrestricted access to relevant information. The new Privacy Policy is problematic. Although it provides for the sharing of personal information with RSPCA NSW, the AWL and the "New South Wales Police Service" (sic), it defines "personal information" as "any information that could identify your (sic) or be used to establish your identity". The examples given are name, gender, date of birth, address, telephone numbers, employment history, licence history, occupation, and "any other information GRNSW may need to identify you".<sup>710</sup> All of this is ambiguous. There should have been an express exemption to permit disclosure of a greyhound's identity to those who have a legitimate interest in it. That includes not only RSPCA NSW, the AWL and the NSW Police Force but also local councils. Although the Office of Local Government is mentioned as an agency to which personal information might be disclosed, it is only for the purpose of Greenhound collar registration for greyhounds which are being registered as a pet in accordance with the CAA and the CAR.

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<sup>707</sup> David OShannessy, 18 February 2016: T896.11-29.

<sup>708</sup> GRNSW website, "Greyhound Identification": <<http://www.thedogs.com.au/DPPage.aspx?id=276>> (accessed 14 May 2016).

<sup>709</sup> Article "GRNSW Announces New Privacy Policy" by GRNSW, 11 March 2016, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7446>> (accessed 14 May 2016).

<sup>710</sup> GRNSW website, "Privacy Policy": <<http://www.thedogs.com.au/Uploads/GRNSW%20Privacy%20Policy%20-%202016.pdf>> (accessed 4 May 2016).

- 8.108 There is a further problem. The new Privacy Policy reserves to GRNSW a discretion. Unless the person has consented to disclosure, GRNSW must take all reasonable steps to satisfy itself that the person to whom, or organisation to which, the information will be disclosed has a commitment to protecting an individual's personal information "at least equal to GRNSW's commitment".<sup>711</sup>
- 8.109 In circumstances where, pursuant to the CAA and the CAR, a number of agencies have a legitimate interest in obtaining the identification details of greyhounds, their locations and ownership, sometimes urgently, none of the above makes a great deal of sense. What does make sense is that greyhounds should be registered on the CA Register at all times.
- 8.110 The Commission accepts, nevertheless, that the life of a greyhound is such that it may be moved to a number of locations during the course of rearing, education, training and racing and that the obligation to provide notice of each movement might be unduly burdensome for industry participants in circumstances where they are already obliged to provide notice to GRNSW under R 105 and R 106. However, there is no additional burden if a notification under R 105 or R 106(3) would be sufficient notification for the purposes of the CAA.
- 8.111 The Commission recommends that the regulator's role as a Registration Agent (for the purpose of processing on the CA Register the permanent identification, change of ownership/details and lifetime registration information) should apply to all greyhounds and not just those undertaking approved retraining programs.<sup>712</sup> In that way, there will not be any discretionary provision of information, privacy concerns, or other matters that will impede access by those who are entitled to it to facilitate the exercise of their statutory duties. Whether or not the regulator remains GRNSW, the regulator must update the CA Register by reference to R 105 and R 106(3) notifications received by it from time to time.

## The Crimes Act and the NPWA

- 8.112 Section 530 of the Crimes Act creates the offence of "serious animal cruelty". A person who, with the intention of inflicting severe pain, tortures, beats or commits any other serious act of cruelty on an animal and kills or seriously injures or causes prolonged suffering to the animal is guilty of an offence. The maximum penalty is imprisonment for five years.
- 8.113 The offence is one of specific intention, namely, to inflict severe pain on the animal.<sup>713</sup> It is unlikely to be particularly relevant to the issues which are being considered by the Commission. Even in relation to live baiting, it is perhaps unlikely that the intention behind the practice would be to inflict severe pain on the small animals which were used. Severe pain, death and injury were the terrible consequence of the practice rather than its purpose.
- 8.114 Pursuant to s. 98(2)(a) of the NPWA, it is an offence to harm any protected fauna.
- 8.115 The expression "protected fauna" is defined to mean "... fauna of a species not named in Schedule 11."
- 8.116 Both rabbits (*oryctolagus cuniculus*) and piglets (*artiodactyla*) are referred to in Schedule 11 of the NPWA. They are not protected fauna. However, a number of other small animals, such as

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<sup>711</sup> Ibid.

<sup>712</sup> Division of Local Government, Department of Premier and Cabinet, *Guidelines for Approval As A Greyhound Re-Training Program Under Clause 33B(1)(a) of the Companion Animal Regulation 2008*, October 2011, p. 4.

<sup>713</sup> *R v Lopez* [2014] NSWSC 287 at [59]; The section was enacted to deal with the worst examples of animal cruelty involving conduct, such as torture, which was intended to inflict severe pain. New South Wales, *Parliamentary Debates*, Legislative Assembly, 9 November 2005, 19388 (Sandra Nori).

possums, are not referred to in Schedule 11. They are protected fauna. Possums were used by certain industry participants as live bait.

- 8.117 The maximum penalty for an offence against s. 98(2)(a) of the NPWA is \$11,000 and an additional \$1,100 in respect of each animal that is harmed, or imprisonment for six months or both.

## Investigation and prosecution of welfare offences

- 8.118 The Commission considers that the amendments which it has recommended will assist in stamping out live baiting and facilitate the investigation and prosecution of those who offend.

- 8.119 In its submission to the Commission, GRNSW suggested that the regulatory powers contained in the Rules should be enshrined in the Act. It also suggested that its officers should have similar powers of investigation as are currently available to those investigating offences under the POCTAA, including the power to obtain warrants which can be executed, *inter alia*, at premises occupied by unlicensed persons.<sup>714</sup> Before addressing GRNSW's submissions, it is necessary to consider the enforcement regime which exists under the POCTAA.

- 8.120 The NSW Department of Primary Industries is responsible for administering the POCTAA and the POCTAR, but officers of the Department of Primary Industries do not have powers of enforcement.

- 8.121 The persons responsible for enforcement of the legislation are "officers" and "inspectors", as defined in the POCTAA.

- 8.122 Pursuant to s. 4 of the POCTAA, an "officer" is defined as:

Officer means:

- (a) a member of the police force or an inspector within the meaning of the *Animal Research Act 1985*,
- (b) an officer of an approved charitable organisation who is appointed by the Minister as an officer for the purposes of this Act, or
- (c) a Public Service employee who is appointed by the Minister, or by a person employed in the Department authorised by the Minister, as an officer for the purposes of this Act.

- 8.123 The expression "charitable organisation" is defined in s. 4 to mean:

- (a) the Royal Society for the Prevention of Cruelty to Animals, New South Wales and
- (b) any other organisation or association which has as one of its objects the promotion of the welfare of, or the prevention of cruelty to, animals, or any class of animals, and which is a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose.

- 8.124 Section 34B of the POCTAA deals with approved charitable organisations. The Minister is given power to approve of a charitable organisation for the purposes of the exercise by its officers of law enforcement powers under the Act.<sup>715</sup>

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<sup>714</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [426]-[434].

<sup>715</sup> POCTAA s. 34B(1).

- 8.125 There are two charitable organisations which have been approved, namely RSPCA NSW and the AWL. They, together with officers of the NSW Police Force, are charged with exercising the law enforcement powers contained in the POCTAA.
- 8.126 Some powers of investigation and enforcement under the POCTAA are vested in “officers” and others in “inspectors”. Pursuant to s. 24D of the POCTAA, an “inspector” is defined to mean a police officer or an officer (other than a police officer) who is the holder of an authority issued by the Minister, the Director General or a Deputy Director General of the Department of Industry, Skills and Regional Development.
- 8.127 An “inspector” as defined by the POCTAA as necessarily an “officer”. However, he or she has additional powers of investigation and enforcement as a consequence of the authority issued by the Minister, Director General, or Deputy Director General referred to above.
- 8.128 Part 2A Division 1 of the POCTAA sets out the powers and obligations of officers generally. They are:
- (a) demanding a name and address;<sup>716</sup>
  - (b) requiring the responsible person for a vehicle to disclose the identity of the driver who has committed an offence in the course of driving the vehicle;<sup>717</sup>
  - (c) supplying the officers’ details when exercising any power under the POCTAA as well as giving warnings that a failure or a refusal to comply with a request of the officer in the exercise of a power may be an offence;<sup>718</sup> and
  - (d) exercising certain powers in respect of offences against s. 9(1) of the *Veterinary Practice Act 2003 (NSW)*.<sup>719</sup>
- 8.129 Division 2 of Part 2A of the POCTAA sets out the powers of inspectors. They are:
- (a) The power to enter land for the purpose of exercising any of the inspector’s functions.<sup>720</sup> The power to enter dwellings is subject to limitations. Absent the consent of the occupier or the authority of a search warrant, an inspector cannot enter a dwelling unless the inspector believes on reasonable grounds that an animal has suffered significant physical injury, is in imminent danger of suffering significant physical injury or has a life threatening condition which requires immediate veterinary treatment and it is necessary to exercise the power to prevent further physical injury or to prevent significant injury to the animal or to ensure that it is provided with veterinary treatment.
  - (b) The power to obtain a search warrant where there are reasonable grounds for believing that there is on the premises to which the warrant relates an animal in respect of which an offence against the POCTAA or the POCTAR is being, has been or is about to be committed, or that there is evidence of an offence against the POCTAA or the POCTAR that has been committed.<sup>721</sup>
  - (c) The power to inspect and examine land or animals upon it and any accommodation or shelter that is provided for any animal and to inspect records that are required to be kept under the POCTAA or the POCTAR where the land in or on which an animal is being used or kept for use is in connection with any trade, business or profession.<sup>722</sup>

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<sup>716</sup> POCTAA s. 24A.

<sup>717</sup> POCTAA s. 24B.

<sup>718</sup> POCTAA s. 24C.

<sup>719</sup> POCTAA s. 24CA.

<sup>720</sup> POCTAA s. 24E.

<sup>721</sup> POCTAA s. 24F.

<sup>722</sup> POCTAA s. 24G.

- (d) The power to examine animals if the inspector suspects on reasonable grounds that an offence against the POCTAA or the POCTAR is being, has been or is about to be committed in respect of the animal, or the animal has been provided with insufficient food or drink during the previous 24 hours, or the animal is so severely injured or diseased or in such a physical condition that it is necessary that the animal be provided with veterinary care, or that the animal is so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive, and the animal is not about to be destroyed or is about to be destroyed but in a manner that will inflict unnecessary pain.<sup>723</sup>
- (e) The power, after examining an animal that the inspector suspects on reasonable grounds meets any of the criteria referred to above, to take possession of the animal (or its carcass), remove the animal (or its carcass), retain possession of the animal (or its carcass), provide the animal with necessary food, drink or veterinary treatment or destroy the animal in a manner that causes it to die quickly and without unnecessary pain.<sup>724</sup>
- (f) The power to seize evidence when an inspector is lawfully on any land investigating a suspected commission of an offence.<sup>725</sup>
- (g) The power to require assistance from certain persons whilst exercising the inspector's powers.<sup>726</sup>
- (h) The power to give notices in writing requiring persons to take specified action in relation to an animal as the inspector considers necessary to avoid any further contravention of the POCTAA or the POCTAR.<sup>727</sup>
- (i) The power to question persons who the inspector suspects on reasonable grounds has knowledge of matters in respect of which information is reasonably required for the purpose of the inspector exercising his powers or determining whether there has been a contravention of the POCTAA or the POCTAR.<sup>728</sup>

8.130 Proceedings for an offence against the POCTAA and the POCTAR can be commenced by RSPCA NSW, the AWL, an inspector as defined (other than a police officer), the Minister or the Secretary of the Department of Industry, Skills and Regional Development, a person with the written consent of the Minister or Secretary, or any other person or body prescribed by the POCTAR.<sup>729</sup> None have been prescribed in the POCTAR.

8.131 RSPCA NSW informed the Commission that, during the relevant period, it commenced prosecution proceedings under the POCTAA against seven individuals which concerned greyhounds (excluding prosecutions arising from the *Four Corners* footage). Six of these individuals have been convicted, one was withdrawn and two have been taken over by the Director of Public Prosecutions and will be dealt with on indictment.<sup>730</sup>

8.132 The following matters should also be noted:

- proceedings can be dealt with either summarily before the Local Court or by the Supreme Court in its summary jurisdiction but, in the former case, the maximum pecuniary penalty that a Magistrate may impose is \$22,000;<sup>731</sup>

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<sup>723</sup> POCTAA s. 24I.

<sup>724</sup> POCTAA s. 24J.

<sup>725</sup> POCTAA s. 24K.

<sup>726</sup> POCTAA s. 24M.

<sup>727</sup> POCTAA s. 24N.

<sup>728</sup> POCTAA s. 24NA.

<sup>729</sup> POCTAA s. 34AA.

<sup>730</sup> RSPCA Response to Order 1 dated 25 May 2015, pp. 23-34 and updated on 10 June 2016.

<sup>731</sup> POCTAA s. 34(1), s. 34(2).

- proceedings must be commenced no later than 12 months after the date alleged to be the date on which the offence was committed;<sup>732</sup> and
- as an alternative to prosecution, an inspector may serve a penalty infringement notice on a person if it appears to the inspector that the person has committed an offence against the POCTAA or the POCTAR, being an offence prescribed by the POCTAR as a penalty notice offence. Those offences are specified in column 1 of Schedule 2 to the POCTAR.<sup>733</sup>

8.133 The Commission notes that the Joint Select Committee, in its Report of 27 August 2015, recommended that Government review the adequacy of penalties, the method of mounting and funding prosecutions, current arrangements for the payment of moieties and cost recovery, and a requirement to ensure that regulators would not be out-of-pocket in pursuing prosecutions.<sup>734</sup> Government supported this recommendation.<sup>735</sup> This will be an important review. It is important that penalties align with community expectations. Further, the investigation and enforcement roles of RSPCA NSW and the AWL under the POCTAA are crucial for the protection of all animals, including those which are used as live bait for greyhounds and the greyhounds themselves. However, RSPCA NSW and the AWL are charities. To the extent possible, those who offend should be required to indemnify them not only for the cost of conducting the prosecution but for the cost of the investigation which led to the commencement of proceedings.<sup>736</sup> The Commission also notes the Joint Select Committee recommended that Government review the adequacy of funding for RSPCA NSW and the AWL.<sup>737</sup> This recommendation was also supported by Government.<sup>738</sup>

8.134 GRNSW could have played a significant role in ensuring that those who compromised the welfare of greyhounds by breaching the POCTAA were held accountable. Although there appears to have been some level of cooperation between GRNSW and RSPCA NSW, it was largely ad hoc, informal and undocumented. A formal structure for the sharing of intelligence and co-operation between the two bodies was required. As is the case with most of the welfare issues examined by the Commission, much was said by GRNSW in terms of strategies and aspirations but little was achieved. The relationship between GRNSW and RSPCA NSW is discussed further in Chapter 9.

8.135 The NSW Police Force has had limited involvement in the enforcement of the POCTAA. Since the creation of GRNSW in 2009, the NSW Police Force created 11 relevant event entries and provided 19 information report summaries. No charges were laid by the NSW Police Force during this period. The practice was that Local Area Commanders would refer matters to RSPCA NSW.<sup>739</sup> On 8 October 2007, the NSW Commissioner of Police and the Chief Executive Officer of RSPCA NSW entered into a Memorandum of Understanding to share intelligence between the NSW Police Force and RSPCA NSW.<sup>740</sup> Under this MOU, subject to the protection of police operations and compliance with privacy legislation,<sup>741</sup> the NSW Police Force would provide any information required by RSPCA NSW for the purposes of its enforcement powers under the POCTAA. In particular, the NSW Commissioner of Police agreed that, upon being notified by RSPCA NSW that it intended to carry out an inspection at a property, the NSW Police Force

<sup>732</sup> POCTAA s. 34(4).

<sup>733</sup> See POCTAR cl. 32.

<sup>734</sup> Joint Select Committee Report 2015, Recommendation 26, p. 84.

<sup>735</sup> Government Response to Joint Select Committee Report 2015, p. 7.

<sup>736</sup> Requiring an offender to pay the costs of an investigation is not new. See, for example, s. 248 of the *Protection of the Environment Operations Act 1997* (NSW).

<sup>737</sup> Joint Select Committee Report 2015, Recommendation 30, p. 93.

<sup>738</sup> Government Response to Joint Select Committee Report 2015, p. 8.

<sup>739</sup> Assistant Commissioner Jenkins Response to Order 1 dated 3 September 2015.

<sup>740</sup> *Ibid.*

<sup>741</sup> In 2007 the *Privacy and Personal Information Act 1998* (NSW) was in force.

would access the COPS system and provide RSPCA NSW with any information it held in respect of the occupiers of the property, including any history of violence, prior cruelty to animals and other information that might lead to concerns for the safety of RSPCA NSW officers or inspectors. It would then advise RSPCA NSW whether it considered it appropriate that an officer of the NSW Police Force attend the inspection.

## The Greyhound Racing Act 2009

8.136 The *Greyhound Racing Act 2009* does not deal expressly with the welfare of greyhounds. To the extent that GRNSW's functions refer to "welfare", it is the "welfare of the greyhound racing industry" in NSW.<sup>742</sup> Nevertheless, as GRNSW currently has exclusive responsibility to control, supervise and regulate greyhound racing in the State,<sup>743</sup> and the welfare of greyhounds must be in the interests of the industry, it is implicit that it has the power to develop policies for the protection of greyhound welfare.

8.137 In RSPCA Australia's submission to the Five Year Statutory Review,<sup>744</sup> it noted that, although the Act did not specifically address animal welfare matters, it did provide for the adoption of rules which address certain requirements in relation to the appropriate treatment of greyhounds. It considered that, for statutory consistency, it was important that the relationship between the POCTAA and the associated animal welfare components of the Act be clearly defined. To that end, it suggested that animal welfare issues could be better embedded within the Act by including:

- A provision within the body of the Act clarifying its inter-relationship with the POCTAA, such as:

This Act, and any regulations, rules or minimum standards made under it, are subject to and do not affect the operation of the *Prevention of Cruelty to Animal Act 1979* (NSW).

The Commission agrees. However, it should extend to the POCTAR and to any legislation which establishes a new greyhound racing regulator. There is power under the POCTAR to make enforceable Codes of Conduct. That power is addressed later in this Chapter. Any power of a regulator to formulate industry Codes of Practice or to make rules which might impact on the welfare of greyhounds must be subject to any enforceable Code of Practice created under the POCTAR.

- A requirement in the Act that any regulations, rules and minimum standards made under it are not inconsistent with the POCTAA. The Commission considers that this is unnecessary in light of what has been said above.
- A requirement in the Act that GRNSW consult with RSPCA NSW and other welfare organisations when developing and amending regulations, rules and minimum standards relating to or potentially impacting on animal welfare. As has already been addressed in this Chapter, the Commission agrees. It should also apply in respect of any new regulator.
- A provision in the Act that requires GRNSW and its stewards to report any serious or repeated breaches of an animal welfare-related rule or standard to RSPCA NSW or other animal welfare authority. The Commission agrees that this should be spelt out in the Act. Again, if a new regulator is established then it will need to be contained in the Act establishing it too.

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<sup>742</sup> The Act s. 9(2)(c).

<sup>743</sup> The Act s. 9(2)(a).

<sup>744</sup> RSPCA, Submission 4a to the Five Year Statutory Review dated 13 February 2015.

- An obligation on GRNSW to collate certain information about stewards' investigations and offences under the Rules, including animal welfare-related offences, and to report such information on an annual basis to the Minister and the Parliament of New South Wales. The Commission agrees that GRNSW or any new regulator should be required to report annually details of any proceedings brought for welfare related disciplinary offences including progress and outcomes. It should not be required to report on ongoing investigations as public disclosure may prejudice them.

## Operation of Trial Tracks

8.138 Greyhound trial tracks must be registered. Those who manage or control greyhound trial tracks who do not register them commit an offence against s. 22 of the Act.<sup>745</sup> The maximum penalty is \$440.

8.139 The expression "greyhound trial track" in the Act is defined to mean:

... 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.<sup>746</sup>

8.140 GRNSW informed the Commission that its Trial Track Registration Policy applies to 'public' trial tracks only.<sup>747</sup> That is, commercial operations that open their gates to the public and registered participants and charge a fee for the use of facilities.<sup>748</sup> However, the Commission heard evidence and received other materials which indicated that it is not uncommon for trial tracks or slipping tracks to exist on private property.<sup>749</sup> Although it could not be said that they were 'held out' to industry participants as being available for use, they were certainly used by other industry participants, sometime because live rabbits were made available to them.

8.141 The Commission recognises that it may not be possible to provide the same level of regulation of these 'private' properties as currently applies in respect of public trial tracks. Nevertheless, they should be licenced and subject to regular inspections by the regulator.

8.142 The Commission recommends that the Act governing the regulator make it compulsory for a private trial track to be registered with the regulator. Further, it should be a condition of the licence of a private trial track that the track should be used only by greyhounds that are owned or leased by the licensee. The regulator must develop a policy and system which ensures that private trial tracks are regularly inspected.<sup>750</sup>

8.143 The final report of the Queensland Greyhound Racing Industry Commission of Inquiry by Commissioner Alan MacSporran QC ("the MacSporran Report") made a number of recommendations, one of which was as follows:

The Commission recommends that the rules of racing be reviewed to ensure that any activity of breaking in, pre-training, training or trialling is only permitted at registered tracks and in the

<sup>745</sup> It is also a breach of the Rules.

<sup>746</sup> The Act s. 3.

<sup>747</sup> GRNSW website, "Trial Track Registration Policy":

<<http://www.thedogs.com.au/Uploads/160304%20Trial%20Track%20Registration%20Policy.pdf>> (accessed 26 May 2016).

<sup>748</sup> GRNSW Response to Order 1 dated 1 May 2015, p. 87.

<sup>749</sup> Ibid, p. 94.

<sup>750</sup> Pursuant to the Rules LR 150P the Stewards currently have power to enter a property and inspect a registered greyhound trial track.

presence of a person registered as the operator of the track or a person duly authorised by that person to supervise the activity.<sup>751</sup>

- 8.144 The effect of the Commissioner’s recommendation, if adopted by Government, would be to prohibit any trialing or training of greyhounds at any private property. That would seem to include greyhounds personally owned by the proprietor or occupant of the property.
- 8.145 The Commission considers that it would be as effective, and less burdensome, to require private trial tracks to be registered. The Commission does not consider that in relation to private tracks there should be a requirement that the “operator” be present at all times. The requirement that a manager be in attendance at all times during which a public trial track operates is as much, if not more, about the protection of the public as it is about the welfare of greyhounds.
- 8.146 There is a second reason why private trial tracks should be regulated. Unlike public trial tracks, they are not professionally prepared or maintained. There are two points in time when a greyhound is at the greatest risk of injury: during a trial and during a race. Injury is more likely to occur if track surfaces have not been professionally prepared or maintained. The Rules should be further amended to require private trial tracks to be maintained to a standard reasonably required by the regulator. If industry participants consider this to be unduly burdensome, then they must trial their greyhounds at a registered trial track. The Commission notes that, currently, GRNSW may cancel the registration of a greyhound trial track if the condition of the track or the surrounds is unsuitable for the trailing or training of greyhounds.<sup>752</sup>
- 8.147 GRNSW informed the Commission that its Trial Track Registration Policy required registered trial tracks to adhere to standards of animal welfare. That is incorrect. The objectives of the policy are stated to be to protect the financial viability and reputation of the industry and to protect and develop the interests of the industry and its stakeholders generally.<sup>753</sup> Animal welfare is not mentioned in the policy.
- 8.148 GRNSW’s regulation of registered trial tracks has been less than ideal. The Commission was informed by GRNSW that, since 10 April 2010, there had only been three inspections of registered trial tracks in NSW.<sup>754</sup> That is unfortunate, particularly when they all occurred on the same day, namely, 11 December 2012.<sup>755</sup> The Commission heard evidence and received other material suggesting that live baiting had occurred at trial tracks and that live rabbits had been supplied at others. Rule 150M prohibits the operation of a registered trial track unless the manager of the track or, if the manager is absent pursuant to leave of absence granted by GRNSW, a person approved as acting manager of the track, is personally present at the track. GRNSW informed the Commission that it had never taken steps to implement or enforce this rule.<sup>756</sup>
- 8.149 It is important to note that trials occur regularly at registered trial tracks, including those which form part of the premises where race meetings are held. Performance qualifying trials may occur prior to race meetings to ensure that particular greyhounds are fit to race – for example, after a greyhound has been subject to a stand-down or incapacitation period. They may also occur after a race meeting or at “dedicated trialling sessions”.

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<sup>751</sup> MacSporran Report, Recommendation 15, p. 10.

<sup>752</sup> The Rules LR 150L(2)(d) .

<sup>753</sup> GRNSW website, “Trial Track Registration Policy”:

<<http://www.thedogs.com.au/Uploads/160304%20Trial%20Track%20Registration%20Policy.pdf>> (accessed 26 May 2016).

<sup>754</sup> GRNSW Response to Order 1 dated 1 May 2015, p. 93.

<sup>755</sup> Box Hill, Glengarrie and Wollondilly. Four years later the licensed Manager of the Box Hill Trial Track was convicted of live baiting offences. On 16 December 2015, John Gauchi was convicted for live baiting offences after pleading guilty. He was sentenced to 18 months imprisonment with a non-parole period of 12 months.

<sup>756</sup> GRNSW Response to Order 1 dated 1 May 2015, p. 91.

- 8.150 The Commission was informed by GRNSW’s Chief Veterinary Officer that the presence of veterinarians at “dedicated trialling sessions” is not required. These are trials not related to race days.<sup>757</sup> In terms of post-race trials, the position in relation to veterinarians is not entirely clear. Dr Bryant told the Commission that veterinarians were expected to remain on track until the conclusion of post-race trials and that he thought it was an “unwritten policy” of GRNSW that they do so. The Commission understands that this may be the position in relation to post-race trials at TAB meetings but not in relation to non-TAB meetings. GRNSW’s former General Manager, Education and Welfare, Mr O’Mara, told the Commission that at TAB meetings veterinarians are required to be present for pre-race trials but, as there is no obligation for them to remain on track for public trials, they do not always stay for trials conducted after the races. Mr O’Mara further explained that, at non-TAB meetings, it is at the club’s discretion as to whether a veterinarian will remain on track for trials conducted after the races.
- 8.151 GRNSW is aware that the trialing of greyhounds involves significant welfare issues. During trials greyhounds may suffer very significant injuries which require immediate treatment. Sometimes the injuries are so severe that they must be put down. Indeed, there is no relevant distinction between the injuries that a greyhound may suffer whilst trialing and those that it might suffer whilst racing.
- 8.152 As has been noted, trials regularly take place at race tracks on days when there are no race meetings. They also take place at registered trial tracks. The Commission considers that it is unacceptable that greyhounds can be trialed at these tracks without a veterinarian being present. A number of completed R 106 forms which were provided to the Commission showed that serious injuries had been suffered by greyhounds during trials at which no veterinarian was present. Some of those forms related to the Senior Ranger of Kempsey Council who took it upon himself to euthanase the animals on track. It is apparent that on occasions greyhounds which should have been put down on track were delivered to him subsequently for that purpose.
- 8.153 The Commission recognises that trialing and public trial tracks are important aspects of the industry. However, they cannot be permitted to operate without veterinary care being immediately available if required. This seems to have been recognised by the Greyhound and Harness Racing Regulatory Authority (“GHARRA”) in its 2006 *New South Wales Greyhound Animal Welfare Policy*.<sup>758</sup>
- 8.154 To permit greyhounds to trial without the presence of a veterinarian is, at least potentially, inherently cruel to any greyhound which might need urgent treatment. Of course, greyhounds may be injured while trialing on private trial tracks. However, the Commission is of the view that it would be unduly burdensome on the industry to require it to fund the presence of a veterinarian while trials are being held at these tracks. The conditions of a private trial track licence will only permit greyhounds owned or leased by the licensee to be trialed at these tracks. This will reduce, although it cannot eliminate, the risk of injury to greyhounds at these tracks.
- 8.155 The Commission recommends that the Rules be amended to require that a veterinary surgeon be in attendance at all public trials. Conducting trials where significant injuries can occur without a veterinary practitioner in attendance is unacceptable. This will not be without financial consequences. However it is a cost which, in the first instance, should be borne by the regulator. To leave it to individuals and clubs which operate trial tracks to arrange and pay for the presence of a veterinarian on non-race days involves a significant risk that they will not always do so. It is a risk that cannot be readily policed. It will be a matter for the regulator whether, and in what form, it will seek to recoup that cost. One means would be to reduce the number of trials and

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<sup>757</sup> Dr Elizabeth Arnott, 19 November 2015: T723-724.

<sup>758</sup> Ex P (28 September – 2 October 2015), p. 5.

trial tracks and to increase the fee payable by industry participants to trial their greyhounds. Another means would be to limit trials to pre-race and post-race trials and to ensure that the veterinary practitioner who attended the race meeting remained until completion of the post-race-day trials.

## Should GRNSW have statutory powers of investigation?

- 8.156 It is apparent that most of the additional powers which GRNSW seeks are powers which it considers would facilitate the enforcement of the Rules.
- 8.157 GRNSW submitted to the Commission that it requires extensive powers to effectively supervise and regulate the industry.<sup>759</sup> It cited the live baiting scandal as evidencing the need to be equipped with appropriate powers to monitor and supervise industry activity to target misconduct.<sup>760</sup> It seeks to have the powers enshrined in the Act.
- 8.158 Assuming for the moment that the regulator requires further powers to effectively supervise and regulate the industry, one solution might be to have certain officers of the regulator appointed as inspectors under the POCTAA.
- 8.159 This issue was also considered in the Milne Report, discussed above.<sup>761</sup>
- 8.160 Dr Milne recommended that the audit and inspectorate functions of GRV be transferred to an independent greyhound Inspectorate under the direct control of government and funded by industry. He also recommended that inspectors of the inspectorate be authorised under the *Domestic Animals Act 1994 (Vic)*<sup>762</sup> and the *Prevention of Cruelty to Animals Act 1986 (Vic.)* with powers limited to greyhound businesses. This recommendation was made on the basis that authorised inspectors under both of those Acts had powers which GRV-appointed inspectors and stewards did not. More particularly:
- ... they require written consent prior to entering a property and have no powers to enter a property unannounced, no powers of search and seizure (except with respect to documents at racing and training tracks), and no powers to seek warrants to enter to search for dogs or seize documents from a place of residence, or to issue a notice to comply.<sup>763</sup>
- 8.161 The Commission assumes that the absence of power identified by Dr Milne concerns premises which are not owned, occupied or under the control of a licenced person and used in relation to that licence. Under R 18 authorised officers are given very wide powers to enter those premises. Once entry has been obtained, they can search the premises and do many other things including taking possession of items found there, including greyhounds. In NSW, LR 18 also permits an authorised officer to secure against interference anything that cannot be conveniently removed from the premises.
- 8.162 The Commission considers that, although the problem identified by Dr Milne cannot be said to be remote, the investigation powers given to inspectors under the POCTAA should not be given to officers of the regulator absent a proper case that they are necessary. That is particularly so if

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<sup>759</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [426]-[434].

<sup>760</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [426].

<sup>761</sup> Milne Report, p. 15.

<sup>762</sup> This Act is similar to the CAR. The Victorian *Code of Practice for the Operation of Greyhound Establishments* was created under this Act.

<sup>763</sup> Milne Report, p. 24.

there is the risk that third parties who are not industry participants may be affected by their exercise.<sup>764</sup>

- 8.163 There are a number of matters which should be noted.
- 8.164 First, GRNSW did not request that its officers be authorised under the POCTAA. Rather it suggested that its officers should have similar powers of investigation. Those matters are addressed below.
- 8.165 Second, it is not appropriate for the regulator's officers to be appointed under the POCTAA unless they are to investigate welfare crime as distinct from matters concerning non-compliance. For the reasons which the Commission has advanced in Chapter 9, the regulator should not be responsible for investigating breaches of the POCTAA.
- 8.166 Third, if there is a possibility that registered greyhounds will be located on premises under the control of persons who are not registered as owners or otherwise licenced, then this is a consequence of a flawed registration and licencing system. And there is no doubt that it is currently inadequate. It remains the case today that rearing properties do not have to be licenced and rearers do not have to be licenced as rearers.<sup>765</sup> Similarly, it remains the case today that breaking in or education establishments do not have to be licenced and educators do not have to be licenced as educators. Under LR 125, rearers and educators must be licenced as "breeders". This requirement was introduced on 1 July 2015. It was a particularly superficial response to years of criticism that rearers and educators were permitted to operate unlicensed. GRNSW indicated that there are now doubts concerning whether the national tiered licencing system will be adopted by all states by 1 July 2016<sup>766</sup> and proposes that whelpers, rearers and educators will receive a "transitional" licence from 1 July 2016 which will be granted for 2 years . It is proposed that after 2 years these industry participants can apply for a "full" licence. However, the requirements for obtaining a temporary licence and whether they will have any impact upon the welfare issues that the Commission has identified in respect of rearers and educators is unknown. They are "still being developed".<sup>767</sup> More concerning is the fact that rearing and education premises will remain unlicensed despite years of criticism. Unlicensed rearing and breaking in/education premises were exposed by the *Four Corners program* as being the principal places where live baiting occurred. There is currently no proposal that they be licensed.<sup>768</sup> The question of unlicensed education facilities and their links to live baiting was the subject of discussion between RSPCA NSW and GRNSW at the RSPCA Inspectors Conference in September 2009. The Chief Inspector of RSPCA NSW gave evidence that these establishments were not necessarily covered by the enforceable welfare codes of practice that existed under the POCTAA.<sup>769</sup>
- 8.167 If the licencing and registration requirements are strengthened so that all premises where greyhounds are kept are registered and all industry participants are licenced then the powers of entry, search and seizure contained in the rules should be adequate. It should be noted that the Rules currently require that greyhounds be kept at all times at the registered address of the

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<sup>764</sup> The Commission notes that the Joint Select Committee Inquiry into Companion Animal Breeding Practices in NSW recommended (Recommendation 25) that Council Rangers should be given the powers of "officers" under the POCTAA. The recommendation was not supported by Government.

<sup>765</sup> A Standard Form Rearing/Spelling Agreement was issued by GRNSW on 1 January 2011. It defined a "rearer" to mean a person registered or approved by GRNSW to breed, rear or spell a greyhound for a purpose pursuant to the rules and the NSW Animal Welfare Code of Practice. There is not and has not been any approval process or licensing regime for rearers.

<sup>766</sup> GRNSW Response to Order 27 dated 19 February 2016.

<sup>767</sup> Ibid.

<sup>768</sup> To the extent that it might be suggested that rearers and educators will be "regulated" by the Code of Practice for Breeding, Education and Rearing, this is incorrect. The Code of Practice is inadequate. It is addressed in Chapter 9.

<sup>769</sup> David OShannessy, 18 February 2016: T883.29-36.

owner or trainer unless permission is first obtained from GRNSW.<sup>770</sup> Thus, as a practical matter, rearing establishments and education facilities have generally been under the control of a registered trainer. However, this exposes a flaw in the rules which the Commission considers should be remedied.

- 8.168 Until 1 January 2011, R 18, which contained the powers of entry and related powers, commenced as follows:

An officer of the Controlling Body so authorised may at any time enter upon land owned or occupied by any person or club ...

- 8.169 From 1 January 2011, this became R 18(2), but the wording was amended to read:

An officer of the Controlling Body so authorised may at any time enter upon land or premises owned, occupied or under the control of a licenced person and used in any manner in relation to any licence or club ...

- 8.170 The creation of a link between premises which may be entered and used "... in relation to any licence ..." is problematic. A licenced trainer might be rearing greyhounds but he or she will not be using the premises in relation to their trainer licence. They will be using the premises for an activity which is currently unlicensed. The Commission considers that R 18(2) should be amended by deleting the words "and used in any manner in relation to any licence."

- 8.171 The Commission considers that officers of the regulator should not be given similar powers of investigation to those exercised by officers under the POCTAA.<sup>771</sup>

- 8.172 The Commission has already highlighted the need to ensure that GRNSW does *not* investigate breaches of the law in relation to animal welfare. Possible breaches of the POCTAA must be referred to RSPCA NSW, the AWL or the NSW Police Force for investigation. They have a range of powers which will assist in that process. The same procedure should also be followed in relation to suspected breaches of other criminal laws. They should be referred to the NSW Police Force, which has extensive powers of investigation. That should remain the case if Government accepts the Commission's recommendation to establish the Greyhound Racing Integrity Commission as a statutory corporation representing the Crown to regulate the industry. Government should not be required to oversee the exercise of investigatory powers which are unnecessary.

- 8.173 The Commission also considers that it would be inappropriate to vest in GRNSW many of the further additional powers it seeks. It is currently a body which is independent of Government. Some of the additional powers it seeks would involve the abrogation of a number of fundamental common law rights. They are addressed in Chapter 9.

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<sup>770</sup> The Rules R 105.

<sup>771</sup> The Commission is of the same view in relation to authorisation under the CAA.

## Recommendations

3. Section 21 of the *Prevention of Cruelty to Animals Act 1979* (NSW) should be amended to strengthen the offences of live baiting. The recommended amendments are detailed in the Chapter.
4. The exemption in R 86C(5) of the Rules of Racing in relation to the keeping of live animals at or on premises where greyhounds are kept should not continue.
5. There should be a mandatory requirement that dogs which engage in the sport of lure coursing are registered as such on the NSW Register of Companion Animals for such period or periods of time during which they engage in the sport. The penalty for a failure to register them should be the same as that which applies generally in respect of a failure to have a companion animal registered on the NSW Register of Companion Animals.
6. Rule 86B(1)(c) of the Rules of Racing should be amended to extend the disciplinary offence to advertising, promoting or organising live baiting.
7. The exemption contained in R 106(4) of the Rules of Racing should not continue.
8. Greyhounds should be registered on the NSW Register of Companion Animals throughout their lifecycle.
9. Greyhound Racing NSW should amend its Privacy Policy to permit disclosure of a greyhound's identity to those who have a legitimate interest in it, including RSPCA NSW, the Animal Welfare League, the NSW Police Force and local councils. Any new regulator should have a like policy.
10. The role of Greyhound Racing NSW, or the role of any new regulator, as Registration Agent under the *Companion Animals Act 1988* (NSW) (for the purposes of processing on the NSW Companion Animals Register the permanent identification, change of ownership details and lifetime registration information) should apply to all greyhounds and not just those undertaking approved retraining programs. Whether or not the regulator remains Greyhound Racing NSW, the regulator must update the NSW Companion Animals Register by reference to R 105 and LR106 (3) notifications received by it.
11. To the extent possible, those who commit offences involving live baiting should be required to indemnify the prosecutor not only for the cost of conducting the prosecution but for the cost of the investigation which led to the commencement of proceedings.
12. The *Greyhound Racing Act 2009* (NSW) should be amended to clarify, or any new Act establishing a new regulator should specify, its interrelationship with the *Prevention of Cruelty to Animals Act 1979* (NSW), and the *Prevention of Cruelty to Animals Regulation 2012* (NSW) as detailed in Chapter 8.
13. The *Greyhound Racing Act 2009* (NSW) should be amended to include a requirement that Greyhound Racing NSW consult with RSPCA NSW and other relevant welfare organisations when developing and amending regulations, rules and minimum standards relating to or potentially impacting on animal welfare. If a new regulator is established this should be contained in the Act establishing the new regulator.
14. The *Greyhound Racing Act 2009* (NSW) should be amended to include a provision that requires Greyhound Racing NSW and its stewards to report any serious or repeated breaches of an animal welfare-related rule or standard to RSPCA NSW or Animal Welfare League. If a new regulator is established this should be included in the Act establishing the new regulator.

15. The *Greyhound Racing Act 2009* (NSW) should be amended to impose an obligation on Greyhound Racing NSW to report annually details of any proceedings brought for welfare related disciplinary offences including progress and outcomes. If a new regulator is established this should be included in the Act establishing the new regulator.
16. Private trial tracks should be licensed and subject to regular inspections by Greyhound Racing NSW or any new regulator. The *Greyhound Racing Act 2009* (NSW), or the Act establishing the new regulator, should make it compulsory to register private trial tracks. It should be a condition of the licence of a private trial track that the track should only be used by greyhounds that are owned or leased by the licensee.
17. The Rules of Racing should be amended to require private trial tracks to be maintained to a standard reasonably required by the regulator.
18. Officers of Greyhound Racing NSW or any new regulator should not be appointed authorised officers or inspectors under the *Prevention of Cruelty to Animals Act 1979* (NSW). Possible breaches of the *Prevention of Cruelty to Animals Act 1979* (NSW) and of other criminal laws concerning the welfare of greyhounds should be referred to RSPCA NSW, the Animal Welfare League or the NSW Police Force for investigation.



## 9 Animal welfare: the compliance regime, policies and codes

### GRNSW Rules of Racing

9.1 Greyhound Racing New South Wales (“GRNSW”) contends that the GRNSW Greyhound Racing Rules (“the Rules”) outline and define, in detail, the regulatory obligations and roles of all individuals and organisations that participate in the sport of greyhound racing with respect to the welfare of greyhounds. GRNSW pointed to the Rules as containing welfare protocols which enhanced this welfare. It said:

The NSW Greyhound Racing Rules outlines and defines, in detail, the regulatory obligations and role of all individuals and organisations that participate in the sport with respect to the welfare of greyhounds. The Rules contain more than 150 Local Rules (set by GRNSW) and National Rules (set by Greyhounds Australasia) that are often supported by other policy documents.<sup>772</sup>

9.2 This is an overstatement. The Rules do not outline or define in detail the regulatory obligations and role of all individuals and organisations that participate in the sport with respect to the welfare of greyhounds.

9.3 That is not to say that GRNSW did not have power to make rules which would enhance and protect the welfare of greyhounds. As the “Controlling Body”, the rule-making power in s. 21 of the *Greyhound Racing Act 2009* (“the Act”) is wide enough to achieve that purpose. Parliament obviously contemplated that GRNSW would make rules that would include welfare standards. Section 23(2) of the Act permits rules to be made in relation to the keeping of greyhounds that are in the care or custody of registered persons and the breeding of greyhounds (including the registration or recording of sires, services and litters). The phrase “in relation to” is wide enough to describe every conceivable connection between two subject matters. There is nothing in the Act that suggests that the welfare of greyhounds has “no relation to” the keeping of greyhounds. Until recently, GRNSW showed little interest in embedding comprehensive welfare standards in the Rules. An exception was the Code of Practice for the Keeping of Greyhounds in Training (“the GRNSW Training Code”) which came into effect on 1 July 2011.

9.4 Greyhounds Australasia (“GA”) comprises representatives from the controlling bodies in the Australian States and Territories and New Zealand. Its Charter is to support these jurisdictions via encouragement of a holistic approach to the Australasian greyhound racing industry and creating uniformity with the brand.<sup>773</sup>

9.5 GA has developed national rules of racing known as the Greyhounds Australasia Rules (“GAR”). The Rules which bind participants in NSW bear the prefix “R”. Rules made by GRNSW have the prefix “LR” signifying it is a local rule. The Local Rules of a Controlling Body take precedence over the GAR.<sup>774</sup>

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<sup>772</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>773</sup> Greyhounds Australasia website, “About Us”: <<http://www.galtd.org.au/general/about-greyhounds-australasia>> (accessed 16 May 2016).

<sup>774</sup> The Rules R 7.

9.6 Currently the Rules impact upon the welfare of greyhounds by:<sup>775</sup>

- prescribing particular race day standards;
- requiring certain minimum welfare obligations to be met;
- requiring the registration of trial tracks and imposing particular restrictions on their operation;<sup>776</sup> and
- incorporating two codes of practice which apply to particular stages in the greyhound's lifecycle.<sup>777</sup>

### Race day requirements

9.7 There are a number of rules which address the welfare of greyhounds on race day. They include:

- Empowering a member of GRNSW or an official or authorised person of GRNSW, who has reasonable grounds to suspect that an impropriety is about to or may take place, or has taken place at a meeting or trials, to do various things including entering and inspecting the area where the meeting is being or is about to take place and requiring the examination of any greyhound.<sup>778</sup>
- Requiring stewards to inspect the kennel building, surface fixtures and fittings of the track and racing equipment prior to the commencement of any kennelling for a meeting and as often as thereafter may be necessary.<sup>779</sup>
- Requiring the trainer of a greyhound to be responsible, and make provision for, the proper care and handling of each greyhound from the time the greyhound arrives at a race course for an event or trial until the time the greyhound leaves the racecourse.<sup>780</sup>
- Requiring the trainer and/or handler of a greyhound drawn for an event to ensure that the greyhound is fit and properly conditioned to race.<sup>781</sup>
- Requiring stewards to have a veterinary surgeon examine a greyhound presented for an event in order to determine that the greyhound is fit to compete and, in the case of a bitch, is not in season.<sup>782</sup>
- Permitting an authorised veterinary surgeon or authorised person or stewards to impose a period of incapacitation where a greyhound is injured during an event.<sup>783</sup>
- Requiring stewards to order that a greyhound be prohibited from competing in an event where a veterinary surgeon who has examined the greyhound has found it to be suffering from an illness or condition which affects, or may affect, any part of its central or peripheral

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<sup>775</sup> The Rules now seek to protect small animals which might be used as live baits. Live baiting is addressed in Chapter 3.

<sup>776</sup> Pursuant to s. 9(2)(b) of the Act, one of GRNSW's functions is to register trial tracks. It has the power to do so pursuant to s. 17(1). It is an offence to manage or control a trial track which is not registered: s. 22. The maximum penalty is \$440. Registration can be cancelled: s. 21(1)(a).

<sup>777</sup> These are addressed later in this Chapter.

<sup>778</sup> The Rules R 14(2)(a), R 14(2)(d).

<sup>779</sup> The Rules R 26.

<sup>780</sup> The Rules R 27.

<sup>781</sup> The Rules R 32.

<sup>782</sup> The Rules R 37.

<sup>783</sup> The Rules R 73.

nervous system or which, in the opinion of the veterinary surgeon, may cause erratic behaviour or an unsatisfactory performance of the greyhound.<sup>784</sup>

- Prohibiting the nomination of a greyhound which has whelped a litter until the expiration of ten weeks after the date of whelping and until it has completed a satisfactory trial in the presence of stewards.<sup>785</sup>
- Restricting the eligibility of greyhounds which have performed a natural service or have undergone a draw of semen until at least 48 hours after the completion of the service or draw.<sup>786</sup>
- Requiring that a greyhound which has not competed in an event for a period in excess of six months is ineligible to be nominated for an event until it passes an approved veterinary examination and completes a satisfactory trial in the presence of an official of GRNSW.<sup>787</sup>
- Prohibiting the nomination for an event of a greyhound less than 16 months of age.<sup>788</sup>

9.8 The requirements referred to above are important welfare requirements. However, they are race day requirements only. Greyhounds spend a fraction of their short lives at the track. What is of equal importance is the management of their welfare away from the track. In relation to that important issue the Rules have little to say.

## Other welfare standards

9.9 The Rules make limited provision for the welfare of greyhounds under the care or custody of registered participants beyond race day. They do not impose standards which embrace all of the “Five Freedoms” (referred to in Chapter 8), although some are consistent with them.

9.10 R 106(1) and (2) provide:

### **R106 Proper care (welfare) of Greyhounds**

- (1) A registered person must ensure that greyhounds, which are in the person’s care or custody, are provided at all times with:
  - (a) proper and sufficient food, drink and protective apparel;
  - (b) proper exercise;
  - (c) kennels constructed and of a standard approved by the Controlling Body which are adequate in size and which are kept in a clean and sanitary condition; and
  - (d) veterinary attention when necessary.
- (2) A registered person must exercise such reasonable care and supervision as may be necessary to prevent greyhounds pursuant to the person’s care or custody from being subjected to unnecessary pain or suffering.

9.11 In isolation, R 106(1) and (2) are deficient in terms of protecting the welfare of greyhounds. Their needs extend well beyond what is prescribed. Nevertheless, the Commission considers that it would be inappropriate to clutter the Rules with detailed standards which apply beyond race day. The appropriate course is to embed appropriate standards in a statutory, and enforceable, Code of Practice that reflects the welfare needs of greyhounds who are purpose

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<sup>784</sup> The Rules R 74(1).

<sup>785</sup> The Rules R 76.

<sup>786</sup> The Rules R 77.

<sup>787</sup> The Rules R 77A, LR 21B.

<sup>788</sup> The Rules R 21.

bred to race. This topic is addressed later in this Chapter. That is not to say that the regulator cannot from time to time develop particular standards with the assistance of independent, and appropriately qualified, experts. Animal welfare needs are not static. They have improved over many years and are likely to improve as science and technology develop and as community expectations continue to evolve. Further, the Commission notes the evidence Mr David OShannessy, Chief Inspector of RSPCA NSW, that the statutory codes of practice can become out-dated.<sup>789</sup> The evidence of Mr OShannessy also suggested that updating such codes is difficult and time consuming because of the need for consultation.<sup>790</sup> There are likely to be instances where the regulator will need to develop further standards, even if only as an interim measure.

9.12 The Commission also considers that the Rules should specifically provide a range of penalties for welfare offences, as is now the case in relation to live baiting.<sup>791</sup> There were many examples brought to the attention of the Commission during the inquiry where there were very significant shortcomings in the level of care provided to greyhounds by registered participants. A common response from GRNSW was to issue a ‘work order’ or ‘work directive’ in an endeavour to secure compliance. Sometimes, those work orders or directives were followed up. Sometimes they were not. This state of affairs cannot continue. The Commission recommends that the Rules be amended to provide for substantial penalties in relation to the breach of the basic welfare standards contained in R 106(1). If a statutory Code of Practice is introduced, as it should be, the Rules must provide that a breach of that code is a breach of the Rules. The range of penalties should include suspension and disqualification for serious breaches and continuing or repeated breaches. Those who fail to achieve the basic levels of care referred to in R 106(1) should know that they will be disciplined and that the likely penalties will be significant.

9.13 There are other Rules which are not necessarily limited to the protection of the welfare of greyhounds on racing day. They include:

- a requirement that greyhounds be free of prohibited substances;<sup>792</sup>
- an offence of using any gear, equipment, device, substance or by any other means inflicting undue suffering on a greyhound;<sup>793</sup>
- the need to notify GRNSW when a greyhound has been transferred or retired.<sup>794</sup>

## Freedom from prohibited substances

9.14 This subject is addressed in Chapter 20.

## Inappropriate gear, equipment and devices

9.15 On 1 December 2015, following evidence given by Dr Karen Dawson, Dr Leonie Finster and Dr Jade Norris,<sup>795</sup> GRNSW banned the use of barking muzzles at race tracks. Pursuant to Clause 5.11 of the amended GRNSW Training Code issued on 1 December 2015, the use of barking muzzles at the race track is now “strictly prohibited.” GRNSW has also purported to limit the use of barking muzzles on other occasions. However, it follows that, if barking muzzles create risks on race day, they create the same risks during trials and when greyhounds are kennelled at the

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<sup>789</sup> 18 February 2016: T893.38-40.

<sup>790</sup> 18 February 2016: T894.2-7.

<sup>791</sup> The Rules R 86B.

<sup>792</sup> The Rules R 83, R 79A.

<sup>793</sup> The Rules R 86(ae)(i).

<sup>794</sup> The Rules R 106(3).

<sup>795</sup> Dr Karen Dawson, 18 November 2015: T552.15-19, T564.40-566.13; Dr Leonie Finster, 18 November 2015: T 616.20-40; Dr Jade Norris, 19 November 2015: T 677.19-678.3.

properties of owners and trainers. Clause 5.10 states that the “extended use” of barking muzzles is “not permitted”. In effect, this means that GRNSW consents to their continued use. The Commission is of the view that cl. 5.10 is little more than window dressing since the prospects of enforcing it are, at best, remote. It is unlikely that GNSW would ever obtain evidence that an industry participant had been making use of barking muzzles excessively. Further, the Rules provide no guidance concerning what is excessive and what is not.

9.16 Excessive barking is often the product of frustration caused by a lack of environmental enrichment. Anti-barking muzzles are inherently cruel. They can cause physical damage to a greyhound’s head and restrict its ability to pant, which is necessary for it to control its body temperature. They can lead to heat, stress or death.<sup>796</sup> There can be no doubt that the use of barking muzzles is contrary to two of the Five Freedoms, which are the basic pillars upon which modern animal welfare standards have been developed: the freedom to express normal behaviour and the freedom from fear and distress.

9.17 If animal welfare is, as GRNSW claims it to be, front and centre of its operations, then it should have prohibited the use of barking muzzles completely. That is particularly so in circumstances where its immediate reaction to the evidence given to the Commission was to issue a media release acknowledging that barking muzzles created significant risks to the health and welfare of those greyhounds which were required to wear them. The media statement was issued by GRNSW on 26 November 2015.<sup>797</sup> It stated:

Greyhound Racing NSW (GRNSW) has announced that barking muzzles will no longer be permitted to be used at NSW race tracks from 1 December 2015 due to the risk they pose to the health and welfare of greyhounds.

Barking muzzles are a risk to a greyhound’s health and welfare as:

- They have the potential to limit panting and heat exchange;
- By restricting the opening of the mouth there is risk of aspiration of vomit; and
- They do not alleviate the underlying reason for barking and as such risk increase (sic) a dog’s anxiety and frustration.

Use of barking muzzles to attempt to reduce the greyhound’s energy expenditure prior to racing also cannot be justified on animal welfare grounds and fails to recognise that the greyhound may experience increased distress by restricting its ability to perform a behaviour that can be a coping mechanism (a displacement behaviour). This may have consequences for performance as well as welfare.

9.18 There is a clear inference that the new Clauses 5.10 and 5.11 of the GRNSW Training Code were largely reactive and the product of a compromise reached between GRNSW and industry participants. The Commission finds this to be particularly worrying. The banning of barking muzzles is a practical step which GRNSW could have taken that might have demonstrated some commitment to change, some change in industry culture, and some indication that welfare will not be compromised, or be the product of compromise, moving forward. GRNSW’s practice of establishing welfare standards by compromise is further addressed later in this Chapter.

9.19 The Rules should be amended to prohibit the use of barking muzzles on any occasion.

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<sup>796</sup> Dr Jade Norris, 19 November 2015: T678.1-3.

<sup>797</sup> Article “Use of Barking Muzzles Banned at Race Tracks” by GRNSW, 27 November 2015, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7115>> (accessed 16 May 2016).

## Notification of transfer or retirement

9.20 A lack of transparent records by reference to which greyhounds can be tracked and their status ascertained can impact negatively upon their welfare. It also has a significant capacity to undermine the integrity of the sport and public confidence. The Rules partially address the lack of transparency in relation to transfers and retirement.

9.21 Unfortunately, the requirements of R 106(3) and (4) were largely ignored by GRNSW and many participants. Mr Paul Newson, Interim Chief Executive of GRNSW informed the Commission that:

When I became aware of the poor compliance with GAR 106(3) and/or (4) I made enquiries with senior members of GRNSW such as Mr O'Mara, Mr Fanning and Mr Hallinan, to understand the extent of the issue, the reasons for such extensive non-compliance and GRNSW's regulatory approach and efforts to address. I recall there was acknowledgement that participants largely did not submit the notification form and that GRNSW had not previously monitored or enforced compliance with the rules. My assessment was that GRNSW had been historically indifferent or had not recognised it as a serious issue. Further GRNSW did not have adequate regulatory capability to monitor compliance. Its leadership, strategy, practices, procedures and systems were deficient and demonstrably incapable of developing an appropriate regulatory approach to respond to this issue.<sup>798</sup>

9.22 As far as the Commission is aware, GRNSW has never prosecuted an industry participant for a breach of R 106(3).

9.23 The Notification of Retirement Form required under R 106 ("R 106 Form") provides an important source of information not only in relation to outcomes for individual greyhounds but important welfare issues such as wastage.

9.24 The current R 106 Form is simple. The Commission accepts that it must be kept in a form where the essential information for lifecycle tracking contained in it can be extracted and entered into a database which is readily accessible. However, the current form has shortcomings and the regulator should have it independently assessed for suitability.

9.25 For example, in responding to the question of whether a greyhound is being retired as a pet, the details required are expressed in the following way:

Please provide Third Party, Trainer Name & Lic No: or Other Program details.

9.26 Industry participants cannot be expected to provide more than is requested of them. A participant responding to the question concerning retirement would be required to provide the name of the third party and no more. As a consequence, the accuracy of the information cannot be verified.

9.27 The Commission observed many instances where the information provided was so limited that it could not be checked. In response to GRNSW's recent R 106 Compliance Project, 529 owner transfers were reported by participants in terms such as 'unknown', 'no idea', 'don't know' and 'can't remember'.<sup>799</sup>

9.28 In an industry where wastage is so high and the community is so concerned there will always be a temptation not to report that a greyhound which has been euthanased has met that fate. False or misleading answers have the capacity to significantly misrepresent true wastage figures and rehoming rates. The prevalence of 'snake bites' as a cause of accidental death in R 106 Forms provides a likely example. It is a commonly reported cause of accidental death, not only in this

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<sup>798</sup> GRNSW Response to Order 26 dated 19 January 2016.

<sup>799</sup> GAR 106 Compliance Project Report, p. 3: GRNSW Response to Order 26 dated 19 January 2016.

State but in Tasmania<sup>800</sup> and Queensland. In fact, in Queensland it is the most common cause of accidental death reported by industry participants.<sup>801</sup> The Commission is highly sceptical of these claims of “snake bite” being such a significant cause of the death of greyhounds.

- 9.29 Transfers to third parties raise another significant issue. A transfer to a third party does not necessarily mean that it has been transferred to a third party for rehoming. Indeed, industry participants may transfer possession of greyhounds for the purpose of having them put down, as was happening in the Kempsey region at the hands of the Senior Council Ranger who gave evidence before the Commission.<sup>802</sup>
- 9.30 GRNSW has recently flagged the possibility that industry participants will be monitored in relation to the number of dogs that are euthanased. It may lead to the imposition of breeding restrictions.<sup>803</sup>
- 9.31 The Commission considers that the R 106 Form needs to be amended so that transfers to third parties can be verified. It should contain a form of consent whereby the third party to whom the animal is to be transferred agrees to provide such further information as is required, and to permit inspection of the animal on reasonable notice.
- 9.32 It is critical that the information contained in R 106 Forms is accurate. Rule 86(x), which deals with the making of false and misleading statements, is ambiguous. It concerns the making of such statements to a member, officer or employee of a controlling body only.<sup>804</sup> Rule 106 should be amended to create an offence of providing false or misleading statements in relation to a notification of transfer or retirement. Rule 106 should also be amended to require participants to supply such further information as is required by the regulator. A failure to do so should be an offence and the registration of the offender should be suspended until accurate information is provided.
- 9.33 The regulator also needs to put in place a simple audit plan whereby a statistically significant sample of R 106 Forms are verified each year.
- 9.34 The regulator must be required to report on retirement outcomes each year. That should be done in its annual report. It should include the results of the audit referred to above, so that the public can have some level of comfort that what is reported by industry participants in relation to retirement outcomes is likely to be accurate.
- 9.35 Finally, although the Commission does not consider that the Rules should be cluttered with detailed welfare obligations, it is recommended that they be independently reviewed, particularly in relation to race day welfare obligations, to ensure that what they currently contain is adequate. If Government accepts the Commission’s recommendation in relation to the establishment of a Greyhound Racing Integrity Commission (“GRIC”), that review should be carried out by the Animal Welfare Committee.

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<sup>800</sup> See the Tasmanian Report, p. 27.

<sup>801</sup> MacSporran Report, p. 42.

<sup>802</sup> Robert Watson, 17 November 2015: T509-511.

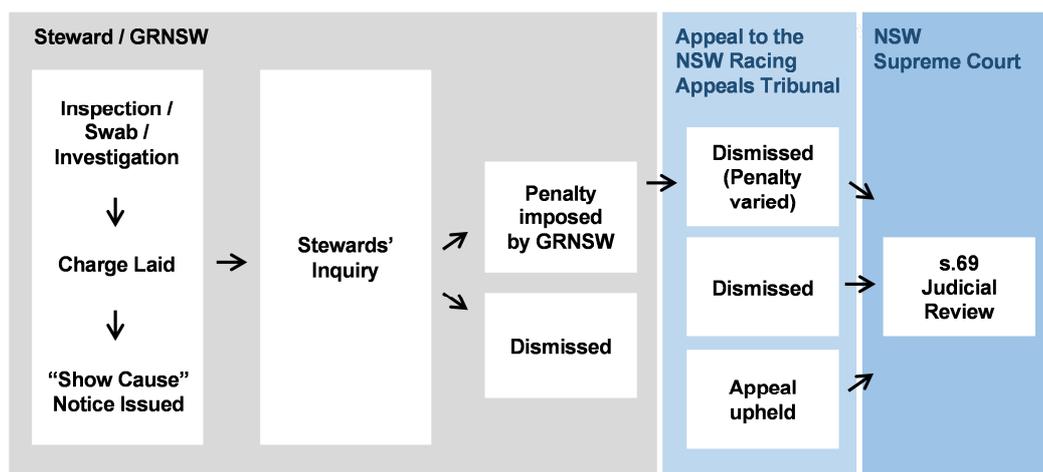
<sup>803</sup> Joint Working Group, “Implementing reform in the NSW Greyhound Racing Industry: Report to the Interim Chief Executive of Greyhound Racing NSW from the Joint Working Group” (January 2016), p. 41.

<sup>804</sup> The Rules R 86(d) speaks of “falsification” of a document in connection with greyhound racing or the registration of a greyhound. This is more apt to describe the creation of false documents or forgeries.

## Disciplinary and inquiry processes

- 9.36 The greyhound racing industry is subject to a two-tiered tribunal system for disciplinary proceedings.<sup>805</sup> The first tier is a decision made by GRNSW, a steward of GRNSW or a steward of a greyhound racing club; and the second tier is an appeal to the Racing Appeals Tribunal (“the RAT”).
- 9.37 The powers and functions of GRNSW and stewards to control, investigate, inquire into and make decisions in respect of race meetings and registered participants derive from the Act and the Rules.
- 9.38 The process by which persons affected by a decision of GRNSW or a steward may appeal against such decision is set out in the:
- *Racing Appeals Tribunal Act 1983* (NSW) (“the RATA”); and
  - *Racing Appeals Tribunal Regulation 2015* (NSW) (“the RATR”).<sup>806</sup>
- 9.39 The pathway from an initial investigation through to the charge, inquiry, appeal and judicial review stages of the disciplinary structure can be illustrated, by way of summary, as follows:

Figure 9.1 Pathway for appeals against a decision of GRNSW or a steward



Source: GRNSW Rules of Racing; *Racing Appeals Tribunal Act 1983* (NSW); GRNSW, Submission 769 to the Commission dated 24 August 2015, Part H.

- 9.40 Inquiries are chaired by the Chief Steward. However, GRNSW’s newly created legal section within the Legal and Policy Unit is now said to be taking an active involvement in the conduct of inquiries.<sup>807</sup>

### Appeals to the RAT

- 9.41 The source of the RAT’s authority to hear appeals in relation to greyhound racing is s. 15A of the RATA. Section 15A sets out three categories of decisions which may be appealed to the RAT, namely:

- (a) decisions of a greyhound racing club or a steward of a greyhound racing club;

<sup>805</sup> This scheme differs from that which applies to the thoroughbred racing industry where there is an intermediate appeal to an Appeal Panel of Racing NSW.

<sup>806</sup> The RATR came into effect on 31 July 2015 upon the repeal of the *Racing Appeals Tribunal Regulation 2010* (NSW).

<sup>807</sup> GRNSW Annual Report 2015, p. 20.

- (b) decisions of a steward of GRNSW; or
- (c) decisions of GRNSW.

9.42 Under the RATR, there are certain qualifications on the types of matters that can be the subject of appeal under s. 15A of the RATA. Specifically, cl. 9 of the RATR provides:

- (1) An appeal may be made to the Tribunal under section 15A or 15B of the Act only in respect of a decision:
  - (a) to disqualify or warn off a person, or
  - (b) to cancel the registration of, or to refuse to register, a person, or
  - (c) to cancel the registration of, or to refuse to register:
    - (i) a greyhound (including registration of a greyhound as a sire and registration of a litter of greyhounds), or
    - (ii) a harness racing horse, or
  - (d) to fine a person an amount of \$200 or more, or
  - (e) 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
  - (f) to disqualify any horse from participating in harness racing, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person, or
  - (g) to suspend any licence, right or privilege granted under the rules, or
  - (h) to reduce in grade a driver for a period of 4 weeks or more, or
  - (i) 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.
- (2) Expressions used in this clause have the meanings given to them in the rules.

9.43 The procedure for appeals to the RAT is set out in Part 3, Division 3 of the RATA. Appeals are *de novo*.<sup>808</sup> They are generally conducted on the evidence below supplemented by any additional evidence which the parties wish to present. The RAT has the power to dismiss the appeal, confirm or vary the decision being appealed, or make such other decision it considers fit.<sup>809</sup> Importantly, s. 17A(2) of the RATA provides that a decision of the RAT is final and taken to be a decision of the person or body who made the original decision being appealed.

9.44 The RAT is not bound by the rules of evidence and may inform itself of any matter in such manner as it thinks fit.<sup>810</sup> The RAT may require witnesses to be examined on oath or affirmation or require evidence to be given by statutory declaration.<sup>811</sup>

9.45 The number of appeals to the RAT from decision of GRNSW or a steward of GRNSW between FY09 and FY15 were:

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<sup>808</sup> RAT Act s. 16.

<sup>809</sup> RAT Act s. 17A.

<sup>810</sup> RAT Regulation cl. 16(1).

<sup>811</sup> RAT Regulation cl. 16(2).

**Table 9.1 Number of appeals to the RAT from a decision of GRNSW or a steward between FY09 – FY15**

Year	Appeals from GRNSW to RAT
2008/09	10
2009/10	11
2010/11	7
2011/12	6
2012/13	9
2013/14	12
2014/15	21

Source: GRNSW Annual Reports for FY09 to FY15.

## Review of RAT decisions

9.46 There is no right of appeal to the Supreme Court of NSW from RAT decisions. An aggrieved party must therefore invoke the supervisory jurisdiction of the Supreme Court.<sup>812</sup> To successfully invoke this jurisdiction an applicant must establish proper grounds for judicial review – for example, that the exercise of power by the RAT was affected by jurisdictional error, such as exceeding or failing to exercise its jurisdiction, or by establishing an error of law on the face of the record. Under the supervisory jurisdiction, the factual merits of a case are not examined.

## Should the regulator be given greater powers of enforcement?

9.47 As has been noted, GRNSW seeks additional powers which it considers would facilitate enforcement of the Rules.

9.48 The Rules create ‘offences’ but that description is primarily used to prohibit conduct which does not amount to a crime but infringes the voluntary code (the Rules) by which all industry participants agree to be bound.

9.49 GAR 3(1) provides:

These Rules apply to the Controlling Body, every Club, and their members, officers, officials, stewards and servants, and every person who takes part in any event or attends any race meeting or trials or wagering at race meetings or any other proceeding or matter purporting to be conducted pursuant to or which is governed by these Rules and any greyhound registered with or appearing in the records of a Controlling Body in any capacity.

9.50 Third parties are not bound by the Rules and they do not breach them even by engaging in conduct which might facilitate others to do so.<sup>813</sup>

9.51 The types of additional powers sought by GRNSW were described in general terms as follows:

The powers that GRNSW requires can be summarised into two broad categories. The first category involves powers to compel the provision of information, production of documents and answers to questions. The second category involves options for imposing liability under legislation including

<sup>812</sup> *Kirk v Industrial Court* (NSW) (2010) 239 CLR 531, cited by Beech-Jones J in *McCarthy v NSW Racing Appeals Tribunal* [2014] NSWSC 798 at [7].

<sup>813</sup> That is not to say that a racing regulator is powerless against third parties. It can, for example, refuse registration on proper grounds or even warn off a third party from race courses which it controls: *Cowell v Rosehill Racecourse Co Ltd* (1937) 56 CLR 605. Further it is possible that third parties can become subject to the rules not because they have submitted to the jurisdiction of a controlling body but because their actions, if related to racing, bring them within the purview of the rules (*Stephen v Naylor* (1937) SR (NSW) 127). Whether this decision would be followed today is open to doubt. The better view of this decision is that it wrongly treated the then Rules of Racing as if they were a statute and overlooked that their binding force depended upon a contract between the Australian Jockey Club and a licensed person.

alternatives to criminal offences such as infringement notice schemes and enforceable undertakings.<sup>814</sup>

Each of the additional powers sought by GRNSW is addressed below.

## The power to compel attendance and production of documents and information

- 9.52 GRNSW seeks the power to require persons to attend and produce documents or other information and to appear before GRNSW at an inquiry hearing without the need to demonstrate that they had brought themselves within the purview of the Rules.<sup>815</sup> Non-compliance would lead to the imposition of a financial penalty.
- 9.53 GRNSW has limited powers under the Act to require production of documents from third parties.<sup>816</sup>
- 9.54 GRNSW informed the Commission that in the past it had encountered arguments concerning whether or not an individual was a person participating in or “associated with greyhound racing”. This expression is defined in the Act to mean handlers, bookmakers’ clerks, breeders, persons who manage or control trial tracks, persons who are officers or employees of clubs or otherwise concerned in their management, and any other person prescribed by the Regulations.<sup>817</sup> GRNSW has the power under the Act to register such persons,<sup>818</sup> and to discipline them.<sup>819</sup> Registered or licenced participants are bound by the Rules to attend and give evidence in inquiries if directed, and to produce documents.<sup>820</sup> Obviously persons who are not bound by the Rules cannot be compelled to attend inquiries to give evidence or to produce documents.
- 9.55 GRNSW informed the Commission that there were occasions where it needed to obtain evidence or documents as part of an inquiry into allegations of “greyhound welfare misconduct” but could be thwarted by reason of its inability to compel attendance. It cited veterinary surgeons as an example of a category of witness whose attendance might be required.<sup>821</sup>
- 9.56 The Commission’s attention was drawn to the Five Year Statutory Review of the *Thoroughbred Racing Act 1996* (NSW) (“the Thoroughbred Act Review”), the report of which was tabled in Parliament in 2014.<sup>822</sup> On 23 July 2013, the Minister appointed David Amarti to provide advice on various questions concerning whether or not Racing New South Wales (“Racing NSW”) should have the power to compel unlicensed persons to attend inquiries, produce documents and give evidence. Mr Amarti was also asked to consider the procedural mechanics to give effect to these powers with appropriate protection against self-incrimination. In substance, Mr Amarti recommended that the *Thoroughbred Racing Act 1996* (NSW) (“the TRA”) should be amended to give Racing NSW those powers and that there should be “criminal sanctions” for non-compliance, being monetary penalties and/or a term of imprisonment.
- 9.57 The Commission accepts that there is a need for a statutory power to compel the attendance of unlicensed parties and the production of documents by such persons at inquiries held under the Rules. However, the power should be exercised by the Supreme Court upon an application by the regulator or its delegates. The use of compulsory powers to require unlicensed persons to

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<sup>814</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [429].

<sup>815</sup> Ibid, [430(a)]; GRNSW Response to Order 1 (Part 2) dated 15 May 2015, p. 5.

<sup>816</sup> The Act s. 41. This power only applies to clubs (and their officers, employees or agents etc.) and those who operate Trial Tracks.

<sup>817</sup> The Act s. 3(2)(a).

<sup>818</sup> The Act s. 18.

<sup>819</sup> The Act s. 21.

<sup>820</sup> The Rules R 86(e).

<sup>821</sup> GRNSW Response to Order 1 (Part 2) dated 15 May 2015, p. 5.

<sup>822</sup> Michael Foggo, “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” (April 2014).

attend such inquiries or to produce documents is a serious infringement of their rights and freedom. What the High Court of Australia said concerning search warrants applies equally to compulsory orders to attend an inquiry or to produce documents:

... it needs to be kept in mind that they authorise the invasion of interests which the common law has always valued highly and which...it went to great lengths to protect.<sup>823</sup>

9.58 The powers sought by GRNSW go beyond those that can be exercised by a police officer. Further, despite many arbitrators being lawyers or retired judges, New South Wales law does not give them any power to compel the attendance of witnesses or to produce documents at an arbitration. Instead, s. 27A of the *Commercial Arbitration Act 2010* (NSW) provides that, with the permission of the arbitrator, a party may apply to the Supreme Court for such orders. There is no reason why the regulator should have any greater powers in this respect than are given to police officers or arbitrators, many of whom will be better qualified to make decisions on these matters than stewards who will be the chief repository of the powers sought by GRNSW.

### The power to supply personal information

9.59 GRNSW claims that it needs express powers to exchange information, including personal information, with other regulatory authorities without consent.<sup>824</sup> It submitted that the power should be contained in the Act. GRNSW claimed that currently it is subject to the Australian Privacy Principles enshrined in the *Privacy Act 1998* (Cth) and is therefore unable to share or exchange information without consent.<sup>825</sup> However, as has been noted, the Rules by which all participants abide are voluntary. The Rules should be amended to make it clear that the regulator has power to supply personal information to other authorities and will do so if requested. The adequacy of GRNSW's new Privacy Policy has been addressed in Chapter 8.

### The power to enter, search, seize and obtain search warrants

9.60 GRNSW also wishes to have statutory powers of entry, search and seizure including the power to obtain and execute search warrants. The powers would extend to the premises of unlicensed persons.<sup>826</sup> The Commission notes that stewards already have extensive powers of entry, search and seizure in respect of licenced persons and the properties which they occupy.<sup>827</sup> For the reasons set out above in dealing with powers to compel the attendance of witnesses and the production of documents, the Commission does not consider that the regulator should have these powers in respect of third parties. They are not bound by the Rules and therefore have not consented to entry of their properties, search and seizure. Entry under a search warrant involves a fundamental invasion of privacy, the justification for which is the investigation of crime. As has been stressed, it should be no part of the regulator's mandate to investigate crime.

### Covert surveillance

9.61 GRNSW wishes to have the power to undertake covert filmed surveillance activities.<sup>828</sup> For the same reasons as apply to the claim for power to issue search warrants, the regulator should have no such power. The *Surveillance Devices Act 2007* (NSW) ("the SDA") imposes strict controls upon those who can apply for a warrant which would permit them to use surveillance devices on private property.<sup>829</sup> They must be law enforcement officers as defined, namely, a

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<sup>823</sup> *George v Rockett* (1990) 170 CLR 104, 110-111.

<sup>824</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [430(b)].

<sup>825</sup> *Ibid.*

<sup>826</sup> *Ibid.*, [430(c)].

<sup>827</sup> The Rules R 18, LR 18.

<sup>828</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [430(d)].

<sup>829</sup> SDA s. 17.

NSW Police Officer or an officer of the New South Wales Crime Commission, Independent Commission against Corruption or the Police Integrity Commission.<sup>830</sup> The application must be based upon a suspicion or belief that an indictable offence has been, is being, is about to be or is likely to be committed.<sup>831</sup> Surveillance devices are not intended to be used as a means of keeping a look out for possible criminal activity. Officers of the regulator are not law enforcement officers. GRNSW does not investigate indictable offences. If information comes to the attention of the regulator which satisfies the criteria for obtaining a warrant, then it should bring it to the attention of the NSW Police Force.

- 9.62 The *Surveillance Devices Act 1999* (Vic.) was considered by Dr Milne in his 2015 report, “Investigation into animal welfare and cruelty in the Victorian greyhound industry” (“the Milne Report”). Noting that police officers are also authorised officers under the *Prevention of Cruelty to Animals Act 1986* (Vic.), he suggested that the process for involving the police in animal welfare investigations involving covert surveillance needed to be strengthened.<sup>832</sup>
- 9.63 A Memorandum of Understanding (“MOU”) exists between RSPCA NSW and the Commissioner of the NSW Police Force.<sup>833</sup> There has been no complaint made to the Commission that the relationship between RSPCA NSW and the NSW Police Force needs to be strengthened to ensure that surveillance devices can be used where the statutory criteria for their use has been met. In relation to indictable animal cruelty offences there is but one. It is the offence of serious animal cruelty which is prohibited by s. 530 of the *Crimes Act 1900* (NSW) (“the Crimes Act”).
- 9.64 Although a case has not been made out to extend the use of surveillance devices to lesser animal welfare crimes, it has to be said that the distinction between aggravated cruelty and the live baiting offences in the POCTAA on the one hand, and the offence encompassed by s. 530 of the Crimes Act on the other, is not great. Further, live baiting is notoriously difficult to detect and prove. Accordingly, the Commission recommends that Government consider extending the offences in respect of which warrants can be obtained under the SDA to the live baiting offences and the offence of aggravated animal cruelty which are contained in the POCTAA.

### Enforceable remedial directions

- 9.65 GRNSW wishes to be able to issue remedial directions that are enforceable in a court, requiring a club, trial track or industry participant to take specified action directed towards ensuring that persons do not contravene provisions under the Act or the Rules.<sup>834</sup> It is far from clear why GRNSW considers that such a power is necessary. The Commission notes that, on a number of occasions, work directions were issued to participants requiring them to comply with aspects of the GRNSW Training Code. The penalties which can be imposed by GRNSW for failure to comply with a work direction<sup>835</sup> include fines, suspension, and cancellation of registration. The Commission considers that this range of penalties is sufficient to ensure compliance if regularly and consistently imposed.

### Enforceable undertakings

- 9.66 GRNSW wishes to have powers to enter into enforceable undertakings from clubs with the effect that clubs would take or refrain from taking certain action, such as requirements to comply with

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<sup>830</sup> SDA s. 4.

<sup>831</sup> SDA s. 4, s. 17.

<sup>832</sup> Dr Charles Milne, Chief Veterinary Officer, “Investigation into Animal Welfare and Cruelty in the Victorian Greyhound Industry” (30 April 2015) (“the Milne Report”), p. 25.

<sup>833</sup> Assistant Commissioner of Police Paul Jenkins Response to Order 1 dated 3 September 2015. The Animal Welfare League (“AWL”) has also entered into a Memorandum of Understanding with the NSW Police Force.

<sup>834</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [430(e)].

<sup>835</sup> An offence under the Rules R 86(p).

operational standards.<sup>836</sup> They would be enforceable in Court and published on line as a “tool to encourage compliance without the need for GRNSW to suspend or cancel a club’s registration which may have significant implications and consequences.”<sup>837</sup> The Commission considers that, again, this is a matter which can be dealt with under the Rules. Any direction issued by the regulator can be published online. That it might be enforceable by a court is unlikely to encourage compliance any more than the imposition of a substantial fine for breach of the rule, which is already recoverable in court.<sup>838</sup>

## Penalty infringement notices

- 9.67 GRNSW wishes to have the power to issue penalty infringement notices (“PINs”).<sup>839</sup> PINs are often a means by which bodies entrusted with powers of enforcement are permitted to deal with minor offences administratively, rather than commencing a prosecution. By way of example, RSPCA NSW and the Animal Welfare League (“AWL”) have the power to issue PINs pursuant to the POCTAA for certain prescribed criminal offences.<sup>840</sup>
- 9.68 GRNSW submitted that PINs would be useful in encouraging compliance with requirements such as lodging R 106 Forms. The Commission considers that the regulator can accommodate the need to secure compliance without using PINs. Those who do not lodge a R 106 Form or lodge one late should be required to pay a late fee and their application for a licence renewal should not be processed until the form is lodged and the fine paid. On 29 October 2015, GRNSW announced that it would proceed in this manner in the future as part of a campaign to promote compliance with R 106. It would also hold back prize money and refuse to accept nominations.<sup>841</sup> The Commission considers that, in the future, those that are repeat offenders should have their registration suspended until payment is received. If, after a further period of grace, payment is not forthcoming, their registration should be revoked.
- 9.69 PINs are not usually regarded as a means of securing compliance. At best they provide an expedient method by which an offender can pay for not having done what should have been done and without being further troubled by enforcement action. From the point of view of those responsible for enforcement, PINs relieve the prosecuting authority of the burden of prosecuting every minor criminal offence. The offender has the option to pay for the offence or proceed to court.

## Statutory recognition of animal welfare policies and codes of practice

- 9.70 GRNSW wishes to have the power to have its policies and codes of practice in relation to greyhound welfare recognised in regulations. It claimed that:

This would ensure that policies and codes of practices are given more weight and credibility by industry participants and provide the ability for external stakeholders to scrutinise them on a regular basis.<sup>842</sup>

- 9.71 GRNSW’s Codes of Practice are addressed in detail below. However, the Commission does not consider that GRNSW’s policies or Codes of Practice should be incorporated into regulations. They are industry policies and industry codes only. They have not, and should not be given, any higher status than that. They are not approved by Government or any independent third party.

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<sup>836</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [430(f)].

<sup>837</sup> Ibid.

<sup>838</sup> The Act s. 46.

<sup>839</sup> Submission 769 to the Commission dated 24 August 2015, [430(g)].

<sup>840</sup> POCTAA s. 33E.

<sup>841</sup> GRNSW website. “106 Compliance Project – What you need to know”: <<http://www.thedogs.com.au/Uploads/FAQ%20-%20GA106.pdf>> (accessed 16 May 2016).

<sup>842</sup> Submission 769 to the Commission dated 24 August 2015, [430(h)].

The Commission is satisfied that the two current GRNSW Codes of Practice are deficient in significant respects. In the Commission's opinion, more "weight and credibility" would be given by industry participants to a code of practice if it was developed externally with appropriate independent expert advice. The same is true of external stakeholders. The desirability of having an enforceable code of practice relating specifically to greyhounds is also addressed below. The Commission does not consider that there is any need to incorporate into Regulations other industry policies which touch on welfare.

- 9.72 Apart from having the power to apply to the Supreme Court to require the attendance of third parties at inquiries and to have them produce documents, the Commission does not consider that the regulator requires the extensive powers identified by GRNSW to effectively supervise and regulate the industry. What is required is a strong, workable and accountable relationship between the regulator and those primarily responsible for the investigation and prosecution of animal welfare crime. The Commission considers that this can best be achieved by MOUs between GRNSW, RSPCA NSW, the AWL and the NSW Police Force and the careful monitoring of performance under those MOUs.

## GHRRA and GRNSW Animal Welfare Policies

- 9.73 Much has been said by GRNSW in relation to the development of the GRNSW Training Code introduced on 1 July 2011<sup>843</sup> and its Code of Practice for Breeding, Rearing and Education ("the GRNSW Breeding Code"), which was introduced on 1 July 2015.<sup>844</sup> However, there is an important welfare policy which preceded them. It was developed by GRNSW and the then Greyhound and Harness Racing Regulatory ("GHRRA") in 2006. In fact, the policy is a code of practice.

- 9.74 The policy was known as the New South Wales Greyhound Animal Welfare Policy ("the GHRRA Animal Welfare Policy").<sup>845</sup> The GHRRA's Annual Report 2007 noted:

The Greyhound Animal Welfare Committee has now finalised the NSW Greyhound Animal Welfare Policy. This has become a blueprint for other States to follow...<sup>846</sup>

- 9.75 The GHRRA Animal Welfare Policy noted:

... this policy is a "living document" and will undergo periodic review to ensure its currency and applicability.<sup>847</sup>

- 9.76 The GHRRA Animal Welfare Policy contained two "Good Practice Guidelines" and noted:

GHRRA and GRNSW have developed the attached Good Practice Guidelines for 'standards of care' that address greyhound and animal welfare issues covering all stages and aspects of a greyhound's lifecycle and activities.<sup>848</sup>

- 9.77 The first of the two sets of guidelines was described as the "Good Practice Guidelines for Standards of Care and Management at All Stages in the Life Cycle of a Greyhound" (emphasis in original). These were intended to provide guidance to industry participants in relation to the care and maintenance of greyhounds generally. They covered such matters as food and water, construction, location and maintenance of kennels, hygiene, transport, race training care, health and veterinary care.

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<sup>843</sup> Amended June and December 2015.

<sup>844</sup> Amended December 2015.

<sup>845</sup> Ex P (28 September – 2 October 2015).

<sup>846</sup> GHRRA NSW Annual Report 2007, p. 16.

<sup>847</sup> Ex P (28 September – 2 October 2015), p. 6.

<sup>848</sup> Ibid.

- 9.78 The second set of guidelines was described as the “Good Practice Guidelines for Standards of Care and Management at Each Stage in the Life Cycle of a Greyhound” (emphasis in original). These provided a guide for the caring of greyhounds during each stage of their development from conception to retirement.
- 9.79 The Good Practice Guidelines were developed with the assistance of, and advice from, Drs Tom Astbury and Phil Davis. At the time, both were recognised as veterinary practitioners with extensive greyhound experience.
- 9.80 The GHRRA Animal Welfare Policy recognised a number of important matters, including:
- (a) that the greyhound racing industry, its promoters and regulators were collectively accountable for the welfare of all animals involved in greyhound racing in NSW which extended to the entire lifecycle;
  - (b) endorsement of the “Five Freedoms” which it acknowledged were universal principles of animal welfare;
  - (c) the need to have lifetime tracking of all registered greyhound pups to ensure industry accountability for the welfare of all greyhounds bred in NSW;
  - (d) the need to have appropriate breeding policies that supported principles of animal welfare;
  - (e) the importance of long term rehoming; and
  - (f) the need to ensure prompt access to veterinary services as required to treat or euthanase injured dogs at all races *and* trials.<sup>849</sup>
- 9.81 The policy was formally adopted by GRNSW in November 2006. More accurately, it was adopted in a modified form and became known as the GRNSW Animal Welfare Policy.<sup>850</sup>
- 9.82 There was only one modification. It was a substantial modification. It was so substantial that its effect was to reduce the policy to one with no practical content. The modification consisted of abandoning the two sets of guidelines which had been developed in consultation with Drs Astbury and Davis. The reason why this occurred is unknown. Whatever the reason, it was irresponsible for GRNSW to have abandoned detailed guidelines which had been developed by independent greyhound veterinary practitioners without replacing them with anything.
- 9.83 The reference to the *Good Practice Guidelines* in the GHRRA Animal Welfare Policy was replaced by a reference to *GRNSW Codes of Practice* in the GRNSW Animal Welfare Policy. However, there were no codes of practice and that remained the case until 2011 when the GRNSW Training Code was introduced. Nothing further happened until GRNSW amended the GRNSW Training Code and introduced the GRNSW Breeding Code in July 2015. The latter code was first announced in June 2015. That was after the establishment of the Commission. The content of the GRNSW Breeding Code, its timing, and its lack of meaningful content very much suggest that it was designed and intended to deflect attention away from the fact that GRNSW and the industry had all but ignored the welfare needs of the industry’s greyhounds for many years.
- 9.84 In April 2010, as part of Project Welfare,<sup>851</sup> GRNSW abandoned the GRNSW Animal Welfare Policy and the GHRRA Animal Welfare Policy. It proposed a plan which it described as the *Project*

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<sup>849</sup> Ex P (28 September – 2 October 2015).

<sup>850</sup> Ex Q (28 September – 2 October 2015).

<sup>851</sup> Ex F (28 September – 2 October 2015).

*Welfare Implementation Plan* (“Project Welfare Plan”).<sup>852</sup> It was presented to the GRNSW Board on 27 April 2010. It referred to the GRNSW Animal Welfare Policy in the following way:

Many of the positive aspects of the 2006 GHRRA policy were either not implemented or continued due to an inherent apathy to welfare by the former GHRRA. Whilst other states expanded the national welfare framework, unfortunately NSW fell behind. This is despite positive steps by GRNSW in the formation of GAP in May 2008.

Past attempts to harness industry support through consultation with members were largely ineffectual, with many positive recommendations in particular from the Animal Welfare Committee failing to be implemented.<sup>853</sup>

- 9.85 As referred to above, to the extent that GRNSW replaced any part of the GHRRA Animal Welfare Policy or the GRNSW Animal Welfare Policy, that did not occur until 1 July 2011 when the GRNSW Training Code commenced. That code of practice covered one stage of a greyhound’s lifecycle only. GRNSW’s former General Manager, Education and Welfare sought to persuade the Commission that the GRNSW Training Code was a significant achievement because it was “the first code in 50-odd years”.<sup>854</sup> It was not. A detailed code had been created by the GHRRA five years earlier. It was simply abandoned by GRNSW.

## GRNSW Codes of Practice

- 9.86 The development over many years of GRNSW’s Codes of Practice provides an important insight into the industry’s past failures to protect and maintain the welfare of its greyhounds. The development of the Codes of Practice is also relevant in relation to the level of confidence that one could reasonably hold that there will be a true commitment by the industry to animal welfare and substantial improvement moving forward.
- 9.87 The GRNSW Training Code was the first in time and it has significance for at least six reasons. First, it was developed internally by GRNSW without any significant independent expert input. Second, it was principally the product of work carried out by a GRNSW manager who had little welfare experience and no welfare qualifications. Third, it was largely a “cut and paste” from existing statutory codes of conduct, some of which were out-dated. Fourth, there was no attempt to develop a code which addressed the particular needs of racing greyhounds. Fifth, in significant respects the content of the GRNSW Training Code was the product of a compromise reached with a number of industry participants.
- 9.88 The sixth reason why the GRNSW Training Code is significant, and perhaps the most important reason, is that the very same process for developing the GRNSW Breeding Code was adopted by GRNSW. However, the context in which it was developed was very different.
- 9.89 The Commission was established on 4 March 2015. The GRNSW Breeding Code was published via a media release on 18 June 2015 and commenced on 1 July 2015,<sup>855</sup> although GRNSW’s General Manager, Education and Welfare claimed that drafting had “commenced” in 2011.<sup>856</sup> There is no doubt that GRNSW was aware at the time of publication of the GRNSW Breeding Code that breeding, overbreeding, poor breeding and wastage were matters of considerable interest to the Commission, as was GRNSW’s failure to produce a code of practice for breeding over so many years. In that context, it is concerning that GRNSW cobbled together the GRNSW

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<sup>852</sup> Ex F (28 September – 2 October 2015).

<sup>853</sup> Ibid.

<sup>854</sup> Anthony O’Mara, 17 February 2016: T 814.33.

<sup>855</sup> Article “GRNSW Releases Code of Practice” by GRNSW, 18 June 2015, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=6546>> (accessed 16 May 2016).

<sup>856</sup> Anthony O’Mara, 17 February 2016: T 814.11.

Breeding Code in the same way it had cobbled together the GRNSW Training Code in 2011. Recently, the interim Chief Executive of GRNSW was reported as having claimed that reform of the industry had been undertaken at a “frenzied rate” which would continue.<sup>857</sup> Welfare policies developed on the run and largely in response to criticisms or likely criticisms are not true reforms and they will likely have little sustainable impact on greyhound welfare. If the greyhound racing industry is to continue, then it is vital that policies developed by the regulator to enhance the welfare of greyhounds are developed in a considered way, drawing on the expertise of external persons.

- 9.90 The Commission notes that, on 18 March 2016, GRNSW announced a review of its codes of practice.<sup>858</sup> That announcement followed evidence given to the Commission which demonstrated that the codes of practice and, in particular, the GRNSW Breeding Code which came into effect after the Commission commenced its inquiry, were seriously deficient. GRNSW’s proposed review is addressed later in this Chapter.

### GRNSW Training Code

- 9.91 The Commission is satisfied that the GRNSW Training Code was developed without any external independent expert input of substance. It was amended in January 2014,<sup>859</sup> updated on 1 July 2015;<sup>860</sup> and further updated on 1 December 2015.<sup>861</sup>
- 9.92 Mr Anthony O’Mara, GRNSW’s former General Manager, Education and Welfare, was the person primarily responsible for developing the GRNSW Training Code.<sup>862</sup> He was an employee of GRNSW who had no formal qualifications in animal welfare; his background was largely in the hospitality industry. He had been a sales manager for numerous organisations,<sup>863</sup> although he claimed to have gained some welfare experience as an employee of Racing Victoria.<sup>864</sup> He was an employee of Racing Victoria for a period of three years, during which time he worked with “the veterinary team and the stewards team” in relation to jumps racing and picnic races, both of which had welfare issues.<sup>865</sup>
- 9.93 Mr O’Mara told the Commission that the Head Veterinary Officer and another veterinary practitioner employed by GRNSW had input into the GRNSW Training Code, as did stewards and industry participants.<sup>866</sup> However, there was but one party which Mr O’Mara suggested had external input into the GRNSW Training Code. That was RSPCA NSW and, in particular its Chief Inspector, Mr OShannessy. Indeed, Mr O’Mara went so far as to suggest that he had “heavily consulted” with RSPCA.<sup>867</sup> Ultimately, he agreed that RSPCA NSW had not “approved” the Code, that Mr OShannessy had expressed dissatisfaction with it and that, at its highest, Mr OShannessy considered the code to be “... a starting point it was better than what had been in place for the

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<sup>857</sup> Article “Ten greyhounds a week are being killed or euthanised after racing on NSW tracks” by Natalie O’Brien, 13 March 2016, *The Sydney Morning Herald*: <<http://www.smh.com.au/nsw/ten-greyhounds-a-week-are-being-killed-or-euthanised-after-racing-on-nsw-tracks-20160310-gng9xx?skin=smart-phone>> (accessed 16 May 2016).

<sup>858</sup> Article “GRNSW Launches Review of Codes of Practice” by GRNSW, 18 March 2016, *GRNSW website*: <<https://www.thedogs.com.au/NewsArticle.aspx?NewsId=7467>> (accessed 16 May 2016).

<sup>859</sup> This was to reflect changes in the requirements for treatment records.

<sup>860</sup> Ex B (17-19 November 2015).

<sup>861</sup> GRNSW website, “Code of Practice for the Keeping of Greyhounds in Training”:

<<http://www.thedogs.com.au/Uploads/1%20Dec%202015%20-%20Code%20of%20Practice%20-%20Training.pdf>> (accessed 16 May 2016).

<sup>862</sup> 17 February 2016: T802.17-19.

<sup>863</sup> 17 February 2016: T807.3-5.

<sup>864</sup> 17 February 2016: T802.41-44.

<sup>865</sup> 17 February 2016: T806.26-29.

<sup>866</sup> 17 February 2016: T806.4-10.

<sup>867</sup> 17 February 2016: T802.43-44.

previous time, which was nothing.”<sup>868</sup> Mr O’Mara also claimed that, when carrying out inspections, officers of RSPCA NSW would inspect against the GRNSW Training Code.

9.94 It is clear that aspects of the GRNSW Training Code were developed as a compromise between the welfare of the greyhounds and what industry participants were prepared to accept. An example is the minimum size for racing kennels. It was a question of what trainers and owners would tolerate.<sup>869</sup> It was based on “participant feedback”.<sup>870</sup> It took into account “the infrastructure that was in place.” The standard of three square metres was a “compromise”.<sup>871</sup> According to Mr O’Mara, “... it would’ve been cost prohibitive for people to meet a brand new code that had been operating out of facilities for many, many years”.<sup>872</sup>

9.95 Mr OShannessy gave evidence to the effect that RSPCA NSW had minimal involvement in the development of the GRNSW Training Code. His evidence is supported by email communications between him and GRNSW. He informed the Commission that around the time of the RSPCA Inspector’s Conference in September 2009, which Mr O’Mara and a number of other GRNSW employees attended, he was informed that GRNSW was considering the development of “... a number of greyhound specific codes for greyhounds”. He provided GRNSW with the links to the existing enforceable codes created under the POCTAA and the POCTAR.<sup>873</sup> He recalled having a discussion with Mr O’Mara at around that time where he pointed out that the enforceable NSW Animal Welfare Code of Practice No 5 – Dogs and Cats in Animal Boarding Establishments of 1996 (“the enforceable Boarding Code”) was out-dated, in need of review and updating, and that:

... there was an opportunity, given that this was a species-specific code of practice, to increase the standards above that which was required at law under the enforceable code of practice.<sup>874</sup>

9.96 Mr OShannessy informed the Commission that the GRNSW Training Code was a disappointment and that, in his view, GRNSW had missed an opportunity to make greater improvements by producing a breed-specific code of practice.<sup>875</sup> He denied that RSPCA NSW had ever “approved” the GRNSW Training Code. He had merely provided feedback to the effect that copying and pasting from the existing code was problematic from an enforcement perspective.<sup>876</sup>

9.97 The only evidence to indicate that RSPCA NSW played any active role in the development of the GRNSW Training Code is that Mr OShannessy assisted in drafting that part of it which concerned euthanasia.<sup>877</sup>

9.98 Contrary to the evidence of Mr O’Mara, Mr OShannessy told the Commission that, in carrying out inspections, RSPCA NSW did not inspect against the GRNSW Training Code. He said:

I don’t think that’s correct. The inspectors would be familiar with those standards, but they also know that the standards that are actually enforceable and able to be policed by the RSPCA are those animal welfare codes of practice that sit underneath the Prevention of Cruelty to Animals Act.<sup>878</sup>

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<sup>868</sup> 17 February 2016: T804.39-41.

<sup>869</sup> 17 February 2016: T816.7-12.

<sup>870</sup> 17 February 2016: T809.12-16.

<sup>871</sup> 17 February 2016: T816.44-817.2.

<sup>872</sup> 17 February 2016: T819.44-820.2. Although Mr O’Mara claimed that he had spoken with Dr Linda Beer of GRV it should be noted that prescribed kennel sizes in Victoria are considerably more generous and that there are significant limitations placed upon the housing of greyhounds in racing kennels. The Victorian requirements are addressed later in this Chapter.

<sup>873</sup> 18 February 2016: T883.41-43, T892.24-27.

<sup>874</sup> 18 February 2016: T893.39-41.

<sup>875</sup> 18 February 2016: T894.37-41.

<sup>876</sup> 18 February 2016: T894.22-35.

<sup>877</sup> 17 February 2016: T806.15.

<sup>878</sup> 18 February 2016: T893.4-7.

- 9.99 Particular aspects of the GRNSW Training Code are addressed below.
- 9.100 A breach of the GRNSW Training Code is an offence under the Rules because it is a “policy” of GRNSW.<sup>879</sup>
- 9.101 The GRNSW Training Code concerns one aspect of a greyhound’s lifecycle only, being the period of time during which the greyhound is in training. That is between the ages of 18 months and 4.5 to 5 years.
- 9.102 The GRNSW Training Code as first published stated that it was designed to encourage a consistent approach that would provide for the welfare of greyhounds by specifying minimum standards of accommodation, management and care that were appropriate to their physical and behavioural needs. It also asserted that the GRNSW Training Code would enable industry members, by adhering to it, to demonstrate their concern and duty of care for the racing greyhound.
- 9.103 The GRNSW Training Code was rudimentary in form and content, contained a significant exemption in relation to kennels registered prior to April 2011, and was based in part on the enforceable Boarding Code. As has already been noted, the enforceable Boarding Code is created under the POCTAR.<sup>880</sup>
- 9.104 The GRNSW Training Code contains minimum standards in relation to a number of matters such as bedding, hygiene, pest control, nutrition, exercise (30 minutes once per day or 15 minutes twice per day), veterinary care, disease prevention, transport, and euthanasia.
- 9.105 When first published in 2011, the GRNSW Training Code contained the following acknowledgement:
- It is acknowledged that the specific needs of a greyhound vary throughout its lifecycle. Separate Codes of Practice will be available to define the requirements in the following areas including:
- (1) Breeding
  - (2) Rearing
  - (3) Education<sup>881</sup>
- 9.106 Despite this acknowledgement, it took another four years to publish a further code to meet the needs of greyhounds during other stages of their lifecycles. In the meantime, those specific needs were largely ignored by GRNSW and a number of industry participants.
- 9.107 The Commission received a number of submissions which suggested that many greyhounds lead a life of deprivation. When they are not racing, they are kept in small kennels and pens, often alone, lacking stimulation, habituation and socialisation. Examples of accommodation and care well below any acceptable level can be seen in Ex O.
- 9.108 The Working Dog Alliance Australia (“WDA”) was commissioned by GRNSW to undertake a review and assessment of best practice rearing, socialisation, education and training methods for greyhounds in a racing context. This became the title of the WDA’s final report, which was published in July 2015 (“the WDA Report”). The WDA made the following observation:

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<sup>879</sup> The Rules R 86(ag).

<sup>880</sup> The code contained an acknowledgement that persons in charge of greyhounds had a “legal liability” under the *Prevention of Cruelty to Animals Act (General) Regulations 2006* which has now been superseded by POCTAR. Clause 20 (now cl. 26) prescribes particular minimum welfare standards for the conduct of “animal trades”.

<sup>881</sup> Ex R (28 September – 2 October 2015); Ex A (17-19 November 2015), p. 1.

It is common practice for greyhounds in Australia to spend a significant period of their adult life under conditions of individual housing. This is unacceptable from an animal welfare standpoint. Dogs are highly sociable animals and single-housing eliminates their ability to demonstrate one of the Five Freedoms – Freedom to express normal behaviour: by providing sufficient space, proper facilities and company of the animal’s own kind.<sup>882</sup>

- 9.109 Many kennel environments do not provide all that the dogs need – particularly social contact, control over their own environment and adequate exercise and enrichment. These environments may lead to discomfort and pain, may elevate levels of disease and distress and prevent a dog from expressing its normal behaviours. They can thus have poor welfare outcomes.<sup>883</sup>
- 9.110 When first published in 2011, the GRNSW Training Code specified the following minimum size requirements:
- (a) **Racing Kennels** – a minimum size of three square metres for a single greyhound in race training. An example of two metres by 1.5 metres was given. Mesh fencing was required to be 1.8 metres high.
  - (b) **Day/Spelling Yard** – a minimum size of six square metres. Mesh fencing was required to be a minimum of 1.7 metres.<sup>884</sup>
  - (c) **Exercise Yard** – generally to be 30-50 metres in length and three to four metres wide.<sup>885</sup>
- 9.111 A number of matters should be noted.
- 9.112 First, GRNSW did not suggest that these dimensions were based on any animal welfare research or science into the needs of greyhounds or on independent expert advice. Greyhounds that are purpose bred to race have unique welfare needs during each stage of their development. Few would argue otherwise. The Commission has already referred to how Mr O’Mara arrived at his minimum kennel size requirement.
- 9.113 Second, the standards contained in the GRNSW Training Code have never been significantly updated. They were never reviewed against contemporary best practice. They have not been significantly revised to take account of advances in the understanding of animal physiology and behaviour, technological changes and the community’s attitudes and expectations concerning the welfare of animals. To a significant degree, the standards set in the 2011 version of the GRNSW Training Code were simply copied, sometimes punctuation perfect, into the 1 July 2015 version and the 1 December 2015 version.
- 9.114 Third, the minimum standards contained in the GRNSW Training Code were not only copied into more recent editions. Many were also simply copied into the GRNSW Breeding Code, which commenced on 1 July 2015. A telling example is that in the GRNSW Breeding Code a minimum standard for “Racing Kennels” of three square metres was included. Breeding females do not race. Their pups do not race. Nor do young greyhounds that are being reared. This is a particularly telling example of the inadequacy of GRNSW’s minimum welfare standards. A standard was reached by way of compromise and without proper independent expert advice. No thought was given to the question of whether this standard was appropriate for breeding females, pups or young greyhounds. It was simply copied over into the GRNSW Breeding Code. The Commission has already noted its view that the introduction of the GRNSW Breeding Code

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<sup>882</sup> Ex S (17-19 November 2015), p. 8.

<sup>883</sup> Animals Australia, Submission 651 to the Commission dated 6 July 2015, p. 25.

<sup>884</sup> The Code does not require a day/spelling yard to be provided.

<sup>885</sup> The Code does not require that an exercise yard be provided. Walking machines can be used but “... should not be seen as a replacement for external walking and environmental stimulation”.

in July 2015 was largely a hasty reaction to criticism that GRNSW must have known would be levelled at it.

9.115 Fourth, there are aspects of the GRNSW Training Code which create uncertainty. The minimum kennel size requirements are again an example. Many greyhounds are likely to be involved in some form of race training once they have been reared, although it might not be racing. As no minimum requirements have been specified for *any* other kind of kennel, industry participants would be entitled to assume that, once reared, they can house their greyhounds in solitary kennels of no less than three square metres. This state of affairs can be contrasted with what is required in Victoria pursuant to the Victorian Code of Practice for the Operation of Greyhound Establishments 2004 (“the Victorian Greyhound Code”).<sup>886</sup> In substance that code prescribes:

- (a) a minimum floor area of three square metres with a minimum dimension of 1.2 metres for greyhounds that have a weight card issued by Greyhound Racing Victoria that has been signed indicating that the dog has raced during the preceding period two weeks; or
- (b) are less than two years of age and have documentation completed daily recording the times the dog has been exercised twice a day in accordance with the requirements of the code.<sup>887</sup>

9.116 For greyhounds which do not meet this requirement, there is a minimum floor area of ten square metres with a minimum dimension of 1.2 metres. Inside spelling and boarding kennels must be a minimum of ten square metres with a minimum dimension of 1.2 metres. Whelping kennels must be a minimum of 15 square metres with a minimum dimension of 1.2 for a bitch and litter. Rearing yards and outside spelling and boarding kennels must be 250 square metres with a minimum dimension of 1.2 metres. For pups (four to nine months), a minimum of 150 square metres is required for rearing yards and outside spelling and boarding kennels with a minimum dimension of 1.2 metres.

9.117 Fifth, until the GRNSW Training Code was amended in July 2015, it contained no training standards despite its name. The GRNSW Training Code now requires training facilities to be constructed and maintained to minimise risks to greyhounds and persons.<sup>888</sup> Trainers must keep a record of all training equipment used by them in a Facility Register.<sup>889</sup> These are hardly minimum standards for the training of greyhounds or for protecting them against training methods which might compromise their welfare. Perhaps this is a reflection of the fact that for so long industry participants have been permitted to train their greyhounds as they see fit without any regulatory intervention, or at least any intervention except the prohibition against the use of live baits. Training practices commonly used in the industry are largely based upon hearsay and mythology.<sup>890</sup> The comment of Dr Linda Beer<sup>891</sup> below is an apt description of the industry’s approach to training and training methods:

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<sup>886</sup> Victorian Department of Economic Development, Jobs, Transport and Resources website, “Code of Practice for the Operation of Greyhound Establishments”: <<http://agriculture.vic.gov.au/pets/domestic-animal-businesses/greyhound-establishments/code-of-practice-for-the-operation-of-greyhound-establishments>> (accessed 16 May 2016). There are three relevant codes in Victoria. Apart from the “Code of Practice for the Operation of Greyhound Establishments 2004” there is also the GRV “Code of Practice for The Greyhound Industry”. In addition, an enforceable code of practice has been made under the *Domestic Animals Act 1994* (Vic.). It is the “Code of Practice for the Operation of Breeding & Rearing Businesses”. It applies generally to dog breeding and rearing.

<sup>887</sup> The code requires ten minutes twice daily.

<sup>888</sup> Ex B (17-19 November 2015), cl. 15.1.

<sup>889</sup> *Ibid.*, cl. 15.2.

<sup>890</sup> Ex S (17-19 November 2015), p. 5.

<sup>891</sup> Dr Linda Beer is a veterinarian and the current Animal Welfare Manager for GRV.

... much of the training of greyhounds is based on knowledge handed down over time, and often this methodology is out of date, flawed or unacceptable in today's society.<sup>892</sup>

- 9.118 Sixth, to a significant extent the GRNSW Training Code creates discretionary standards only. The terms “should” and “must” are used interchangeably throughout in the code. A minimum standard which “should” be followed is not a standard at all. This was a matter of significant concern to RSPCA,<sup>893</sup> and to the Chief Inspector of RSPCA NSW.<sup>894</sup> The standards concerning minimum sizes for racing kennels, spelling yards and exercise yards are an example. Even the fundamental welfare requirement – one of the five freedoms – that an animal should have sufficient space for it to feed, sleep, sit, stand, lie with limbs extended, stretch and move about, is expressed in discretionary terms.<sup>895</sup>

### **The draft Code of Practice for Rearing and Education – an unpublished predecessor to the GRNSW Breeding Code**

- 9.119 Mr O’Mara produced a draft Code of Practice for Rearing and Education (“the draft Rearing and Education Code”). It was sent to the former Chief Executive of GRNSW on 29 July 2014.
- 9.120 Mr O’Mara informed the Commission that this code was not published because industry participants engaged in the rearing and education of greyhounds were unlicensed. If that was the reason why the draft Rearing and Education Code was not finalised then it is difficult to understand why the GRNSW Breeding Code, which purported to set minimum welfare standards, for not only breeders but for rearers and educators too, was published on 1 July 2015. Although rearers and educators now have to be licenced as breeders, on current proposals they will not be licenced as rearers and educators until July 2016. At that time they will be required to obtain a “transitional” licence.<sup>896</sup> Rearing and education properties will remain unlicensed. Mr O’Mara was unable to explain why, in those circumstances, the GRNSW Breeding Code had been extended to rearers and educators. It is reasonable to infer that, at least in part, the GRNSW Breeding Code published on 1 July 2015 was extended to include rearers and educators so as to accommodate criticism that no welfare standards applied to their activities. The role of educators and education facilities in the greyhound racing industry has been a front and centre welfare issue following the *Four Corners program*.
- 9.121 The draft Rearing and Education Code was again the product of compromise. Mr O’Mara had travelled to Victoria and had inspected a number of greyhound properties located there. Kennel size requirements in Victoria were more generous than common kennel sizes in New South Wales. In his email of 29 July 2014 to Mr Hogan, Mr O’Mara said:

A joint inspection of seven properties with our GRV colleagues last week was positive and seen consensus and compliance in most areas, with the exception of 3.3 Size and Capacity. In Victoria they are not expected to house more than four dogs (12 weeks and older) together at any one time. This approach would see the rearing methods of some of our leading and most successful properties i.e. Wheeler’s, Hallinan’s Finn’s and Northfield’s not being permissible in Victoria.

We believe that approach by GRNSW in 3.3 to see a staged increase in dog numbers combined with adequate risk assessments of dogs in care will enable NSW commercial operators to maintain their current approach with in some cases minor modifications.

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<sup>892</sup> Beer L, Wilson, J and Stephens J, “Improving the welfare of the racing greyhound - A Greyhound Racing Victoria perspective”, 2008, *Australian Animal Welfare Strategy International Animal Welfare Conference*, Gold Coast, Australia.

<sup>893</sup> Ex QQ (17-19 November 2015).

<sup>894</sup> David OShannessy, 18 February 2016: T895.35-40.

<sup>895</sup> Ex B (17-19 November 2015) cl. 3.1.

<sup>896</sup> GRNSW Response to Order 27 dated 19 February 2016.

The major issue identified by GRNSW and GRV field officers is the current level of non-compliance by education facilities (breakers), this is further compounded by a declining number of operators.<sup>897</sup>

- 9.122 The reference to “3.3” in Mr O’Mara’s draft Rearing and Education Code was a reference to basic animal housing. There were no minimum kennel size requirements. Mr O’Mara explained that this was unnecessary because young greyhounds on rearing properties were free to move about. As far as the Commission is aware, there have been no “risk assessments of dogs in care” to ensure that industry participants and, in particular, the larger scale breeders, were not overcrowding their properties with too many young greyhounds within confined areas. The email that Mr O’Mara sent to then Chief Executive is a powerful indictment of GRNSW’s attitude to welfare issues. It makes it clear that GRNSW gave priority to the economic interests of major breeders over the welfare of greyhounds. It proves, if further proof was needed, that so far as GRNSW was concerned, the commercial interests of industry participants were to be preferred to the welfare of the industry’s greyhounds.
- 9.123 In developing the GRNSW Breeding Code, significant parts of the draft Rearing and Education Code were abandoned. One of particular significance was that young greyhounds needed to be socialised. The need for socialisation of young greyhounds is a basic welfare requirement. It is addressed in Chapter 16.
- 9.124 Clause 9.1.1 and 9.1.2 of the draft Rearing and Education Code read as follows:
- 9.1.1 Rearing and education establishments must have a socialisation program to ensure regular contact with their dogs through activities such as grooming, playing, exercise, and patting, this must be in addition to training.
- 9.1.2 Opportunities to exercise in safe areas outside the area they are normally housed in must be provided.<sup>898</sup>
- 9.125 Mr O’Mara gave evidence that he had received advice from the “GAP team” that this minimum standard was “necessary”.<sup>899</sup> Dr Dawson confirmed this to Mr O’Mara.<sup>900</sup>
- 9.126 As General Manager, Education and Welfare, Mr O’Mara was responsible for developing the Greyhounds As Pets (“GAP”) program. He told the Commission that it was, “fairly obvious that there was a significant gap in relation to socialisation or the need to socialise dogs”.<sup>901</sup> He also informed the Commission that, “from the dogs coming through the GAP program, as I said earlier the better socialised dogs have more chance of making it as a pet.”<sup>902</sup>
- 9.127 The socialisation of young greyhounds is, as it is with any young dog, important to their future development. However, in relation to greyhounds it is critical. As Dr Dawson informed the Commission, proper socialisation can be the difference between a greyhound being put down and being rehomed.
- 9.128 Mr O’Mara was unable to explain why by 1 July 2015 this important welfare requirement had been abandoned by GRNSW. He said that:

Some people other than myself would probably see it as not important.<sup>903</sup>

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<sup>897</sup> Ex 000 (17-18 February 2016).

<sup>898</sup> Ibid, p. 58.

<sup>899</sup> 17 February 2016: T825.41-42.

<sup>900</sup> Dr Karen Dawson’s evidence dealt extensively with the importance of socialisation: T554-571.

<sup>901</sup> 17 February 2016: T826.1-3.

<sup>902</sup> 17 February 2016: T826.3-5.

<sup>903</sup> 17 February 2016: T825.36.

- 9.129 It is important. What replaced this standard is addressed below. It is not a standard. It is little more than a motherhood statement. In May 2015, Mr O’Mara left the employment of GRNSW. By then, the Commission had been established. In June 2015, GRNSW announced the introduction of the GRNSW Breeding Code. It commenced on 1 July 2015. It is reasonable to infer that, again, an important welfare aspiration was developed through “compromise”. Although Mr O’Mara had an informed opinion based upon what he had seen and the views of others – such as Dr Dawson – that socialisation was very important to the final outcome for young greyhounds, the socialisation standard, as reflected in the draft Rearing and Education Code, was simply deleted. When asked to explain how this could occur, Mr O’Mara informed the Commission that his view was “not generally shared”.<sup>904</sup>
- 9.130 If greyhound racing is to continue in this State, then the development of welfare standards based upon compromise with industry participants and superficial attempts to deflect criticism will not achieve that end.

### GRNSW Breeding Code

- 9.131 The GRNSW Breeding Code was announced in June 2015 and commenced on 1 July 2015.<sup>905</sup> It was very much a flagship of GRNSW’s approach to welfare moving forward. Again, it was largely created in-house by Mr O’Mara, although he left GRNSW the month prior to the announcement that it would come into effect.
- 9.132 As late as 10 December 2015, GRNSW, via a letter from its solicitors to the Commission, sought to persuade the Commission that the GRNSW Breeding Code was developed in “full consultation” with RSPCA.<sup>906</sup> Nothing could be further from the truth. It was not developed in “full consultation” with RSPCA. GRNSW did not obtain any substantial input from RSPCA or RSPCA NSW. The evidence from Dr Norris of RSPCA Australia and the Chief Inspector of RSPCA NSW, Mr OShannessy, makes that plain.
- 9.133 The GRNSW Breeding Code is expressed to be:
- ... drawn from relevant NSW Codes including the Animal Welfare Code of Practice – Breeding Dogs and Cats, the NSW Animal Welfare Code of Practice No. 5 – Dogs and Cats in Animal Boarding Establishments and GRNSW’s Code of Practice for the Keeping of Greyhounds in Training.<sup>907</sup>
- 9.134 The GRNSW Breeding Code does not inform industry participants that, irrespective of the minimum standards established by GRNSW, they are obliged to comply with the NSW Animal Welfare Code of Practice – Breeding Dogs and Cats (“the enforceable Breeding Code”) and the enforceable Boarding Code, and that a failure to do so might lead to a conviction for a criminal offence. In significant respects, the GRNSW Breeding Code fails to address particular standards contained in the enforceable Breeding Code or creates a lesser standard. The GRNSW Breeding Code may in part be “drawn from” the enforceable Breeding Code but, regrettably, it is not entirely consistent with it. These matters are addressed later in this Chapter.
- 9.135 The GRNSW Breeding Code sets minimum standards not only in relation to the size of racing kennels but also in respect of day/spelling yards and exercise yards. However, there is no mandatory requirement that a rearer, educator or breeder must have such yards. The minimum standards only apply to day/spelling yards and exercise yards “if provided”.

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<sup>904</sup> 17 February 2016: T826.36.

<sup>905</sup> Ex NN (17-19 November 2015).

<sup>906</sup> Letter dated 10 December 2015 from John Dalzell, partner of Gadens Lawyers to Cheryl Drummy, Special Counsel for the Crown Solicitor.

<sup>907</sup> Ex NN (17-19 November 2015).

- 9.136 Despite its name, there are *no* specific minimum standards created in the GRNSW Breeding Code which relate specifically to rearing or rearing practices. There should have been. The Commission heard expert evidence that the remoteness of many rearing properties is such as to deny young greyhounds any opportunity to be properly socialised or become accustomed to the life which awaits them when they commence training. That is, habituation to such matters as unfamiliar people and animals, leads, confinement in a kennel, and noise.<sup>908</sup> The result can be a stressed, fearful and anxious animal which is unlikely to reach its racing potential, is unlikely to be rehomed and, if it breeds, is likely to pass these traits on to its offspring.<sup>909</sup> RSPCA noted that many greyhounds were neither bred nor raised in kennels and, for these animals, the transition from rearing properties to small barren kennels is especially stressful. The GRNSW Breeding Code does not refer to the need for the gradual habituation to kennels.<sup>910</sup>
- 9.137 The same is true in relation to the GRNSW Breeding Code's treatment of greyhound education. Apart from prohibiting the use of live baits and requiring educators (and *trainers*) to keep a Facility Register of the items used to train or educate, the GRNSW Breeding Code does not create any specific welfare requirements in relation to education at all. The primary focus of the GRNSW Breeding Code is on breeding and breeders.
- 9.138 Unlike the GRNSW Training Code, the Breeding Code is referred to in the Rules. However, the Rules reveal further shortcomings.
- 9.139 A "registered breeder" who fails to comply with the GRNSW Breeding Code is guilty of an offence.<sup>911</sup> No such rule applies to other industry participants, such as those involved in the rearing or education of greyhounds, although it might be said that they are caught by reason of the fact that the GRNSW Breeding Code is a "policy".<sup>912</sup> However, because the GRNSW Breeding Code does not impose any obligations of substance upon rearers and educators, the possibility of this occurring is remote.
- 9.140 It should also be noted that there is an inherent inconsistency between the Rules and the GRNSW Breeding Code.
- 9.141 Under the Rules, a person must be registered as a breeder if they arrange for the service or artificial insemination of a dam, have care of a dam whelping a litter of pups, or have care for an unnamed greyhound including times during which the greyhound is being whelped or reared.<sup>913</sup>
- 9.142 However, the GRNSW Breeding Code suggests that it is primarily, if not exclusively, concerned with "Managers", being those in charge of breeding, rearing or education establishments,<sup>914</sup> and the management of greyhounds once they have been "admitted" into such premises following delivery by an owner.<sup>915</sup>
- 9.143 To add further confusion, the word "Manager" has been twice defined and the definitions are inconsistent. Within what are described as "Guiding Principles" the word "Manager" is defined

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<sup>908</sup> The importance of habituation has also been stressed in greyhound literature. The constant handling of pups and the exposure to new experiences during the early stages of development, including taking rides in a car and introduction to collars were suggested by Tracey Lee Boxsell, *The Greyhound Trainer's Challenge for Victory* (1987).

<sup>909</sup> The Commission heard evidence and received evidence that certain traits, in particular fear and anxiety, are heritable. See Dr Karen Dawson, 18 November 2015: T554.28-29.

<sup>910</sup> Ex QQ (17-19 November 2015).

<sup>911</sup> The Rules LR 125(3), LR 125(4).

<sup>912</sup> The Breeding Code states that failure to comply with "this policy" may result in the imposition of a penalty under the Rules (see p. 15); see also The Rules R 86(ag).

<sup>913</sup> The Rules LR 125(1).

<sup>914</sup> Ex NN (17-19 November 2015), cl.1.4.

<sup>915</sup> See Ex NN (17-19 November 2015) cl. 1.7, cl. 11.1, cl. 11.4, cl. 12.4, cl. 14.2.

to mean, "... the person being in charge of a breeding, rearing or education premises".<sup>916</sup> At the very end of the document there is a "Definitions" section. There, "Manager" is defined to mean:

... a person **registered** with GRNSW and who is in charge of premises at which greyhounds are bred, reared **or trained**. [Emphasis added]<sup>917</sup>

- 9.144 The latter definition deletes any reference to premises at which there is "education" and introduces premises at which greyhounds are "trained". As the Commission understands, the GRNSW Training Code, rather than the GRNSW Breeding Code, was intended to cover premises at which greyhounds are trained.
- 9.145 All of the above suggests that the GRNSW Breeding Code was very much a superficial reaction by GRNSW to the exposure of live baiting and the resulting focus of the community at large upon animal welfare within the industry rather than, as it should have been, a properly considered and professionally developed set of minimum standards covering each stage of the greyhound's lifecycle. This is more than worrying. It suggests, as do many other matters considered by the Commission, that the industry may not have a commitment to animal welfare beyond what it considers might appease the community at any point in time. It must be remembered that the GRNSW Breeding Code was not developed by the former management of GRNSW. It was developed in large part by Mr O'Mara prior to his departure from GRNSW in May 2015. And it was put forward by current management as a centrepiece of GRNSW's new approach to animal welfare and as demonstrating a high level of commitment to appropriate animal welfare standards.

### The GRNSW Codes of Practice are inadequate

- 9.146 The Codes of Practice produced by GRNSW are inadequate.
- 9.147 For a number of reasons the welfare of greyhounds did not measurably improve between 2011 and 2015 following the introduction of the GRNSW Training Code.
- 9.148 First, the industry largely treated animal welfare as being limited to matters of "hygiene".<sup>918</sup>
- 9.149 Second, the GRNSW Training Code lacked comprehensive minimum standards based upon what is known of the particular welfare needs of greyhounds which have been purpose-bred to race.
- 9.150 Third, the industry culture was such that it did not consider that welfare was a priority.
- 9.151 The GRNSW Breeding Code is no better. As has been noted, it was hurriedly produced in house. It was not published until after live baiting had been exposed and the Commission had commenced its work. The Commission is satisfied that GRNSW knew that there would be considerable focus on animal welfare issues within the industry that went well beyond the use of small animals to bait greyhounds. The GRNSW Breeding Code's lack of meaningful and well-considered content is testament to the fact that it is a reactive document; one principally designed to deflect criticism. Some parts of it do not create standards at all. In relation to the critical issue of socialisation, the GRNSW Breeding Code creates the following "standard". It is the only socialisation "standard" to which industry participants need to have regard if they breed, rear, or educate young greyhounds. It is no more than commentary. It provides no guidance to industry participants concerning how they should socialise young greyhounds:

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<sup>916</sup> Ex NN (17-19 November 2015), cl. 1.4.

<sup>917</sup> Ibid, p. 15.

<sup>918</sup> Ex X (17-19 November 2015).

Greyhounds which are well socialised to human adults and children and with other animals will become well-adjusted companions. The best opportunity to socialise puppies to humans is before 12 weeks of age.<sup>919</sup>

- 9.152 A number of parties who made submissions to the Commission drew attention to various shortcomings in both Codes and suggested matters which they considered would improve them.
- 9.153 RSPCA drew attention to a number of matters which needed to be included in any Code of Practice.<sup>920</sup> These matters were:
- basic preventative health care;
  - nutrition;
  - veterinary care;
  - appropriate levels of staffing for commercial properties;
  - muzzling;
  - treatment of injuries;<sup>921</sup>
  - proper exercise (solitary confinement in kennels for 23.5 hours out of a 24 hour day with just 30 minutes of exercise is an inadequate standard;<sup>922</sup> ideally greyhounds should be housed in compatible pairs or groups);<sup>923</sup>
  - kennel size;<sup>924</sup>
  - mandatory provision of appropriate exercise yards with open access to kennels;<sup>925</sup>
  - environmental enrichment;<sup>926</sup>
  - structured socialisation;<sup>927</sup>
  - reward based training;<sup>928</sup>
  - breeding practices, restrictions and standards;<sup>929</sup> and
  - rehoming.<sup>930</sup>
- 9.154 The matters cannot be regarded as anything other than basic welfare requirements. There may be others. However, they reflect particular matters which, because of the animal's involvement in this particular industry, have the capacity to be compromised. They should not be negotiable even if some may involve a financial cost.<sup>931</sup> It is not proposed to address the adequacy of each

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<sup>919</sup> Ex NN (17-19 November 2015), cl. 16.4. The only further reference to socialisation is a requirement in cl. 17.13 that pups should not be separated from the litter or their mother until they are seven weeks of age to "facilitate socialisation". Presumably this is to assist in the socialisation of the pup with its littermates. The report of the Working Dog Alliance recommended a structured program of handling and controlled positive exposure to novel stimuli: "Review & Assessment of Best Practice Rearing, Socialisation, Education & Training Methods for Greyhounds in a Racing Context" (July 2015).

<sup>920</sup> A number of these matters were raised in submissions of parties, in further materials received by the Commission and in the evidence. The principal witnesses were Drs Karen Dawson, Leonie Finster and Jade Norris.

<sup>921</sup> Some of these were presented in RSPCA Australia, Response 27 to Breeding Issues Paper dated 7 December 2015.

<sup>922</sup> Dr Jade Norris, 19 November 2015: T652.39-42.

<sup>923</sup> Dr Jade Norris, 19 November 2015: T676.16-18.

<sup>924</sup> Dr Jade Norris, 19 November 2015: T676.21-23. Dr Norris suggested at least nine square metres for short-term housing. The Commission notes that the Victorian "Code of Practice for the Operation of Greyhound Establishments 2004" requires ten square metres except in relation to greyhounds that are actually racing or under two years of age.

<sup>925</sup> Dr Jade Norris, 19 November 2015: T676.26-28.

<sup>926</sup> Dr Jade Norris, 19 November 2015: T676.32-36.

<sup>927</sup> Dr Jade Norris, 19 November 2015: T678.15-16.

<sup>928</sup> Dr Jade Norris, 19 November 2015: T681.30-32.

<sup>929</sup> Dr Jade Norris, 19 November 2015: T682.30-33, T683.2-11, T684.10-21.

<sup>930</sup> Dr Jade Norris, 19 November 2015: T682.18-20.

<sup>931</sup> See generally, RSPCA, Response 27 to Breeding Issues Paper dated 7 December 2015.

specific requirement of GRNSW's Codes of Practice although some comments are made by the Commission in other Chapters. That is because the Commission is of the view that, if the industry is to continue, there should be one enforceable code of practice which has been developed by those who have animal welfare expertise.

### The proposed review of GRNSW's Codes of Practice

- 9.155 On 18 and 19 November 2015, the Commission heard evidence from Drs Dawson, Finster and Norris. Their evidence revealed that GRNSW's Codes of Practice were inadequate. On 17 and 18 February 2016, the Commission heard evidence from Mr O'Mara and Mr OShannessy. Their evidence revealed the manner in which GRNSW's Codes of Practice were developed in-house and, once more, that they were inadequate to protect the basic welfare requirements of greyhounds.
- 9.156 As has been noted, on 18 March 2016 GRNSW announced a review of its Codes of Practice. It claimed to have determined that they failed to properly encompass all stages of the greyhound lifecycle and did not address critical aspects such as socialisation and behavioural enrichment.<sup>932</sup>
- 9.157 The review is to be led by GRNSW's Welfare and Education Unit, being the same unit which, under Mr O'Mara's leadership, created the existing codes. It is to be assisted by an external reference group of "key stakeholders". A regulatory and governance consultant has been engaged by GRNSW to chair the reference group. A representative from the Australian Veterinary Association, an animal welfare scientist, a consultant in animal welfare, ethics and regulatory compliance, and a number of greyhound industry participants will participate in the reference group. The Greyhound Industry Consultation Group and the Greyhound Breeders and Owners Association will also be represented.<sup>933</sup> The aim of the review is to develop a "more modern and effective code of practice" covering the entire lifecycle of the industry's greyhounds.<sup>934</sup> Animals Australia is to be represented.
- 9.158 GRNSW informed the Commission that the reference group met on 26 April 2016 and again on 2 June 2016. A first draft was presented to the reference group on 26 April and a second draft was considered at the meeting on 2 June 2016. It is anticipated that a final Welfare Code of Practice will be completed in August 2016. GRNSW claimed that it would apply to all industry participants.<sup>935</sup>
- 9.159 In its media release, GRNSW noted that the review would be informed by contemporary scientific knowledge and best practice animal welfare standards but that it would also "... give consideration to the practical implications of all recommendations on industry."<sup>936</sup>
- 9.160 Any genuine review of the existing GRNSW Codes of Practice is a positive development. Nevertheless, the Commission is concerned that once more welfare standards may not be set exclusively by reference to the advice of those with independent veterinary welfare expertise. It is concerning that GRNSW has involved industry participants in the process of setting welfare standards. The Commission accepts that their involvement may be seen by GRNSW to be a means by which it can encourage participants to take a proactive role in the welfare of the industry's greyhounds. However, the fact that GRNSW has stated that it will give consideration

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<sup>932</sup> Article "GRNSW Launches Review of Codes of Practice" by GRNSW, 18 March 2016, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7467>> (accessed 17 May 2016).

<sup>933</sup> GRNSW Submission dated 24 May 2016 [91]

<sup>934</sup> Article "GRNSW Launches Review of Codes of Practice" by GRNSW, 18 March 2016, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7467>> (accessed 17 May 2016).

<sup>935</sup> GRNSW Submission dated 24 May 2016 [92], [90]

<sup>936</sup> Article "GRNSW Launches Review of Codes of Practice" by GRNSW, 18 March 2016, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7467>> (accessed 17 May 2016).

to the “practical implications of all recommendations on industry” suggests, again, that welfare standards may be formulated by way of the same process of “compromise” described by Mr O’Mara in his evidence. That would be a very unfortunate outcome and one which is likely to occur if welfare standards are set by reference to any criteria other than that recommended by those members of the reference group who have veterinary and animal welfare expertise. That is not to say that industry, through its regulator, would not have a say if an enforceable code of practice was established under POCTAA and POCTAR. The process for creating such codes involves consultation with industry but it occurs in a formal and regulated setting.

- 9.161 Recently GRNSW advised the Commission that the next draft of the code of practice will be released for “public consultation and feedback”. Once feedback has been received GRNSW’s Welfare unit will confer with the Chair of the reference group to prepare the “final version of the new code”.<sup>937</sup> As far as the Commission is aware, the Chair is a regulatory and governance consultant. Preparing a final version of the code of practice without reference back to those members of the reference group who have veterinary and welfare expertise may create the unfortunate impression that it again minimum standards have been created in-house. That would be particularly so if the final version of the code of practice differs significantly from the draft produced with expert veterinary and welfare input.
- 9.162 The Commission is satisfied that if greyhound racing is to continue in this State then enforceable welfare standards must be established and they must be established by those who have the relevant expertise. The prospect of prosecution for breach of those standards may be one means of demonstrating to the industry that its culture must change. It is no longer acceptable for the industry to treat welfare as a matter limited to ‘hygiene’. There are basic welfare standards which, in this day and age, go well beyond this and they ought not to be compromised. Recently GRNSW informed the Commission that “the minimum standards of care for the entirety of the greyhound lifecycle must be lifted, and should be enforceable under the statute”<sup>938</sup>. It is unclear why in these circumstances GRNSW is developing its own code of practice unless it has assumed that this will simply be adopted as an enforceable code of practice under POCTAA and POCTAR.

### **Enforceable codes under the POCTAA**

- 9.163 The enforceable Boarding Code and the enforceable Breeding Code are statutory codes of conduct made pursuant to the POCTAA and the POCTAR. As has already been mentioned, GRNSW claims in the GRNSW Breeding Code that it was drawn from these codes.
- 9.164 Both the enforceable Boarding Code and the enforceable Breeding Code have application in relation to aspects of a greyhound’s lifecycle.<sup>939</sup>
- 9.165 The enforceable Boarding Code was prepared in consultation with the Boarding and Grooming Group of the Pet Industry Joint Advisory Council, representing a number of organisations involved in dog and cat boarding, and was endorsed by the NSW Animal Welfare Advisory Council (“the AWA Council”).
- 9.166 The enforceable Breeding Code was prepared in consultation with Dogs NSW, Waratah National Cat Alliance, the Australian Veterinary Association, RSPCA NSW, the AWL, NSW Farmers and other people and organisations involved in the breeding of cats and dogs. It too was endorsed by the AWA Council.

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<sup>937</sup> GRNSW Submission dated 7 June 2016 [41]

<sup>938</sup> *Ibid.* [42]. The “statute” identified by GRNSW was POCTAA

<sup>939</sup> The enforceable Boarding Code; the enforceable Breeding Code.

- 9.167 The enforceable Boarding Code is, as its name suggests, a code which sets minimum standards for the care and management of dogs and cats in animal boarding establishments. Greyhounds are boarded from time to time with various industry participants for the purpose of rearing, breaking-in, training and spelling. However, they are not always boarded and, if they are boarded, then it is generally for particular short-term purposes. Many greyhounds are housed and trained by individual owners who also hold training licences.
- 9.168 The enforceable Boarding Code imposes primary responsibility upon the manager of the establishment and is directed towards commercial boarding services, council pound services and veterinary hospital services; all businesses which in the usual course would deal with short-term housing for all breeds of dogs and cats. An animal boarding establishment is a business in the course of which dogs or cats are boarded for fee or reward.<sup>940</sup>
- 9.169 The standards in the enforceable Boarding Code are minimum standards both in relation to the care of animals and proper record keeping. Those standards cover such matters as kennel requirements, hygiene, pest control, waste disposal, animal management (eg. identification, collars and leads), health care, diet, exercise and transport. Nothing in the code is breed specific or accommodates the particular needs of an animal arising out of the purpose for which it was bred and the impact that this might have had on its needs when admitted to the establishment.
- 9.170 The enforceable Breeding Code contains mandatory minimum standards for the care of dogs and cats for breeding. It is designed for everyone involved in the activity of breeding dogs and cats. This code also contains non-enforceable guidelines in respect of each standard. Those guidelines are intended to describe best practice in respect of each standard.
- 9.171 The enforceable Breeding Code also deals with dogs and cats generally. It does not deal with particular breeds or particular welfare needs arising out of the purpose for which they were bred.
- 9.172 Because of the emphasis which GRNSW has placed on better breeding, the education of breeders and the establishment of standards of care for breeders in its submissions to the Commission, it is appropriate to make some comparisons between what it established by way of minimum standards in the GRNSW Breeding Code that commenced on 1 July 2015 and what the enforceable Breeding Code established six years ago. Unless otherwise indicated, what appears below concerns standards rather than guidelines. Both the standards and guidelines are relevant, having regard to GRNSW's claims that it seeks to achieve "best practice" in relation to animal welfare.

#### ***Responsibilities and competency of staff***

- 9.173 A person in charge of a "facility" is not the only person required to meet the requirements of the enforceable Breeding Code.<sup>941</sup> Every day, a person must be present to meet its requirements and must be knowledgeable and competent to provide for care, welfare, feeding and watering, the protection of the animals from distress or injury, cleaning and hygiene, and the identification of signs of common diseases of the species. Trainees and volunteers must work under the supervision of trained and experienced staff.<sup>942</sup>
- 9.174 The guidelines note that, where staff are employed to care for animals, they should have formal qualifications and experience in animal care and management, which should be recorded in a

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<sup>940</sup> POCTAR sch. 1.

<sup>941</sup> "Facility" is defined to mean any place, premises or thing used for the accommodation or shelter of animals for the purpose of breeding or rearing dogs or cats, or where puppies or kittens are housed as a result of breeding; and includes a vehicle used for the transportation of animals: Enforceable Breeding Code p. 3.

<sup>942</sup> Enforceable Breeding Code Pt. 4.

register of staff training. Where appropriate, staff should be retrained on a biennial basis. A number of training requirements are listed. They include current animal behaviour and the social needs of the animal.<sup>943</sup>

- 9.175 The GRNSW Breeding Code does not contain any equivalent of this important minimum standard or the best practice guideline. The GRNSW Breeding Code imposes responsibility on the manager only. There is no standard that the manager or anyone else be “present” to meet the needs of greyhounds under their care or management. There is no requirement that others must work under the supervision of trained and experienced staff. There is no best practice guideline in relation to formal qualifications or training.

#### **Quality management systems and standards**

- 9.176 The object of this part of the enforceable Breeding Code is to ensure that breeding establishments operate in a transparent way so that standards of animal welfare are maintained.<sup>944</sup>
- 9.177 Records must be retained for no less than three years, at the facility, and all staff must be able to produce the records.<sup>945</sup>
- 9.178 There is no equivalent provision in the GRNSW Breeding Code. The Code does no more than note that, under the Rules, records of vaccinations, worming and medical treatments are required to be kept for two years,<sup>946</sup> and that managers are required to keep records for all greyhounds under their care. There is no requirement to keep records after the animal is no longer under their care.<sup>947</sup>

#### **Animal housing**

- 9.179 The object of this part of the enforceable Breeding Code is to ensure that the accommodation, environment and security of the animals are of a standard which ensures their security, safety and wellbeing.<sup>948</sup>
- 9.180 Dog and cat housing must meet certain minimum pen sizes unless they are under veterinary care.<sup>949</sup>
- 9.181 Relevantly, the enclosure of a dog between 40 and 60 centimetres height at shoulder must be an area of 2.4 square metres. For dogs over 60 centimetres height at shoulder, the area must be 3.5 square metres. A bitch and her puppies must also be housed in an area not less than 3.5 square metres.<sup>950</sup> Most adult greyhounds vary in height from 61 to 75 centimetres at shoulder.<sup>951</sup>
- 9.182 The guidelines emphasise that the cage sizes<sup>952</sup> referred to above provide minimum enforceable standards and that breeders are strongly encouraged to ensure that the physical and mental needs of individual animals do not become constrained by their spatial environment.

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<sup>943</sup> There are nationally recognised animal services qualifications. See Department of Education and Training website: <<http://training.gov.au/>> (accessed 16 May 2016).

<sup>944</sup> Enforceable Breeding Code Pt. 5.

<sup>945</sup> Enforceable Breeding Code cl. 5.1.3.

<sup>946</sup> Ex NN (17-19 November 2015) cl. 12.5.

<sup>947</sup> Ibid, cl. 12.6.

<sup>948</sup> Enforceable Breeding Code Pt. 6.

<sup>949</sup> Enforceable Breeding Code cl. 6.1.1.6; Table 1, p. 9; Table 2, p. 10.

<sup>950</sup> Enforceable Breeding Code Table 1, p. 9. There are larger requirements where more than one dog is being housed in the same enclosure.

<sup>951</sup> Greenhounds website, “Greyhound Breed Profile”: <<http://www.greenhounds.com.au/about-greyhounds/greyhound-breed-profile.html>> (accessed 17 May 2016).

<sup>952</sup> There is no distinction between a cage and a kennel.

- 9.183 GRNSW’s Breeding Code includes one measurement in relation to kennel size. That concerns a racing kennel. The requirement is three square metres. That is less than the minimum standards referred to above. There are no standards set in relation to breeding greyhounds. However, as has already been noted, GRNSW’s Breeding Code is capable of being read by industry participants as requiring no more than three square metres for all greyhounds, including breeding animals. On any view, GRNSW has also failed to meet the best practice guideline.

#### ***Animal management***

- 9.184 The object of this part of the enforceable Breeding Code is the paramountcy of the safety, wellbeing, and psychological health of breeding dogs and cats when housed or transported.<sup>953</sup>
- 9.185 Dogs and cats must receive environmental enrichment,<sup>954</sup> recognising the physiological status and special needs of differing ages and species to ensure good psychological health.<sup>955</sup>
- 9.186 The guidelines for this standard note that positive efforts should be made to socialise animals to humans and other animals and that animals that have been well-socialised when young to make better pets.
- 9.187 The GRNSW Breeding Code does not impose a minimum standard on breeders to provide environmental enrichment. Environmental stimulation is mentioned but in a very limited way. Walking machines should not be “seen as a replacement for outdoor walking and environmental stimulation”.<sup>956</sup> The enforceable Breeding Code prohibits the use of treadmills unless they are supervised.<sup>957</sup> The GRNSW Breeding Code does not.

#### ***Food and water***

- 9.188 The enforceable Breeding Code requires that clean water must be available at all times.<sup>958</sup> The GRNSW Breeding Code requires that greyhounds should be provided with adequate amounts of water “daily”.<sup>959</sup>
- 9.189 The enforceable Breeding Code requires that dogs and cats must receive a “balanced and complete diet”.<sup>960</sup> The GRNSW Breeding Code requires that greyhounds be provided with “adequate amounts of good quality food”.<sup>961</sup>
- 9.190 The enforceable Breeding Code requires that puppies and kittens under four months of age must be offered a sufficient quantity of a balanced and complete diet at least three times per day, from three weeks of age.<sup>962</sup> The GRNSW Breeding Code requires that pups up to six months of age must be “fed” two times per day.<sup>963</sup>
- 9.191 The enforceable Breeding Code’s guidelines provide that, with pups and kittens under four months of age, there should be a maximum interval of 12 hours between feeds. For example, a

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<sup>953</sup> Enforceable Breeding Code Pt. 7.

<sup>954</sup> “Environmental enrichment” is defined to mean “the provision of stimuli that promote appropriate physical and mental activities, resulting in healthier and more active animals”.

<sup>955</sup> Enforceable Breeding Code cl. 7.1.1.10.

<sup>956</sup> Ex NN (17-19 November 2015) cl. 10.4.

<sup>957</sup> Enforceable Breeding Code cl. 7.1.1.9.

<sup>958</sup> Enforceable Breeding Code cl. 7.2.1.1.

<sup>959</sup> Ex NN (17-19 November 2015) cl. 9.1.

<sup>960</sup> Enforceable Breeding Code cl. 7.2.1.2.

<sup>961</sup> Ex NN (17-19 November 2015) cl. 9.1.

<sup>962</sup> Enforceable Breeding Code cl. 7.2.1.3.

<sup>963</sup> Ex NN (17-19 November 2015) cl. 9.3.

pup that receives its third and final feed at 5:00pm should receive its first feed the next day no later than 5:00am.<sup>964</sup> Again, GRNSW has failed to meet the best practice guideline.

### **Animal health**

- 9.192 The enforceable Breeding Code requires that any changes in health status of an animal must be promptly reported to the person in charge of the facility.<sup>965</sup> The GRNSW Breeding Code has no such requirement.
- 9.193 The enforceable Breeding Code also requires that, where there is evidence that whelping or kitting has commenced (eg. straining or contracting) and there is no progress within two hours, the bitch or queen must be examined by a veterinary practitioner and appropriate remedial action taken.<sup>966</sup> The GRNSW Breeding Code creates no such requirement.
- 9.194 The enforceable Breeding Code's guidelines list various signs of illness or injury for which veterinary treatment should be sought.<sup>967</sup> GRNSW has copied a number into the GRNSW Breeding Code. However, it has excluded six, namely: patchy hair loss; red or brown coloured urine; depression; fever; presence of external parasites; and any other serious physical or behavioural abnormality.<sup>968</sup> GRNSW did not obtain expert advice before excluding these conditions. GRNSW did not meet the best practice guidelines.

### **Breeding and rearing**

- 9.195 The enforceable Breeding Code provides that bitches and queens must not be intentionally mated during their first oestrous cycle.<sup>969</sup> The GRNSW Breeding Code has no such restriction.
- 9.196 The enforceable Breeding Code provides that a dog or cat must be physically and mentally fit, healthy and free from disease at the time of being mated.<sup>970</sup> The GRNSW Breeding Code contains no such restriction.
- 9.197 The enforceable Breeding Code provides that animals that are isolated from the remaining breeding population must be provided with additional attention and socialisation to animal carers.<sup>971</sup> There is no such requirement in the GRNSW Breeding Code.
- 9.198 The enforceable Breeding Code provides that bitches must not have more than two litters in any two-year period, unless with the written approval of a veterinary practitioner.<sup>972</sup> The GRNSW Breeding Code provides that breeding females must not whelp more than two litters in any 18-month period. There is no requirement to obtain prior veterinary approval. According to Mr O'Mara, this was "a compromise nationally with major commercial breeders."<sup>973</sup> Rule 127 of the Rules was amended on 1 July 2015 to introduce the 18 months litter frequency standard.<sup>974</sup> Throughout the Commission's inquiry GRNSW relied on this lesser standard as demonstrating a measure that it had introduced to reduce wastage and its commitment to the welfare of the industry's greyhounds.

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<sup>964</sup> Enforceable Breeding Code cl. 7.2.2.2.

<sup>965</sup> Enforceable Breeding Code cl. 8.1.1.2.

<sup>966</sup> Enforceable Breeding Code cl. 8.1.1.3.

<sup>967</sup> Enforceable Breeding Code cl. 8.1.2.1.

<sup>968</sup> Ex NN (17-19 November 2015) cl. 11.5.

<sup>969</sup> Enforceable Breeding Code cl. 10.1.1.1.

<sup>970</sup> Enforceable Breeding Code cl. 10.1.1.2.

<sup>971</sup> Enforceable Breeding Code cl. 10.1.1.8.

<sup>972</sup> Enforceable Breeding Code cl. 10.1.1.9.

<sup>973</sup> 17 February 2016: T829.16.

<sup>974</sup> The Rules R 127(12).

- 9.199 It is clear that GRNSW had regard to the enforceable Breeding Code when drafting the GRNSW Breeding Code. However, as has been outlined above, it ignored some standards, modified others, and made no real attempt to commit to best practice.
- 9.200 It is the Commission’s recommendation that, if the industry is to continue, then the setting of essential welfare standards should be carried out independently of the industry. There must be an enforceable code of practice under the POCTAA and the POCTAR. That subject is addressed below. The regulator must be prohibited from making any rules or policies that are inconsistent with that code. That is not to say that GRNSW should not develop welfare standards whether by codes of practice, rules or policies from time to time. As has been noted, as technology, science and community expectations evolve over time, it may be necessary to update what is contained in the enforceable codes of practice.

## An enforceable Greyhound Code of Practice?

- 9.201 A number of interested parties supported the creation of an enforceable Code of Practice to protect the welfare of in industry’s greyhounds.
- 9.202 The use of enforceable codes of practice in Australia and other Western countries is common.
- 9.203 In the United Kingdom, the *Animal Welfare Act 2006* (“AWA UK”) provides for codes of practice to be issued and revised from time to time. They are issued for the purpose of providing “practical guidance”.<sup>975</sup> However, a person’s failure to comply with a provision of a code of practice does not itself render that person liable to proceedings of any kind.<sup>976</sup> Rather, in proceedings for an offence against the AWA UK or the relevant regulations, failure to comply with a relevant provision of a code of practice may be relied upon as tending to establish liability. Conversely, compliance with a relevant code may be relied upon as tending to negative liability.<sup>977</sup> A significant number of codes have been created in relation to a diverse number of animals including poultry, cattle, pigs, sheep, goats, deer, cats, dogs, non-human primates, ratites, turkeys, gamebirds, duck, geese and rabbits.
- 9.204 Enforceable codes of practice that are relevant to greyhound racing exist in other States. In Victoria, there is considerable fragmentation. There are five codes of practice made under the *Domestic Animals Act 1994* (Vic.) that relate to the management of dog-related businesses. The codes are enterprise-specific and outline the minimum standards required for housing, exercise, enrichment, socialisation and care. They are mandatory *if* an establishment meets the definition of a “Domestic Animal Business” under s. 3 of the *Domestic Animals Act 1994* (Vic.). As has been noted, one of the codes of practice is the Victorian Greyhound Code, which specifically applies to greyhounds registered by Greyhound Racing Victoria (“GRV”).
- 9.205 As Dr Milne concluded in the Milne Report, whereas the other dog-related codes were detailed and enterprise-specific, the Victorian Greyhound Code (which was intended to apply to all greyhound breeding, rearing, training or boarding establishments) failed to include critical standards that addressed a greyhound’s exercise, socialisation, handling, transportation and enrichment needs at all stages of the greyhound’s life.<sup>978</sup> It also did not include policies to guide greyhound management and care after retirement from racing.
- 9.206 In Victoria there is also a Code of Practice for the Private Keeping of Dogs made under the *Prevention of Cruelty to Animals Act 1986* (Vic). It applies to all dogs. Dr Milne noted that,

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<sup>975</sup> AWA UK s. 14(1).

<sup>976</sup> AWA UK s. 14(3).

<sup>977</sup> AWA UK s. 14(4).

<sup>978</sup> Milne Report, p. 18.

although that code provided guidance, it lacked specific provisions for greyhounds in the racing industry. Accordingly, he recommended that there should be a revision of the Victorian Greyhound Code so that it was consistent with other relevant codes of practice and with the welfare requirements in place for all other dogs.

9.207 As discussed in Chapter 8, in NSW enforceable codes of practice can be created under the POCTAA and the POCTAR. Pursuant to s. 34A(1) of POCTAA, the POCTAR may prescribe guidelines, or may adopt a document in the nature of guidelines or a code of practice as guidelines relating to the welfare of species of, *inter alia*, companion animals.<sup>979</sup> As noted in Chapter 8, greyhounds are companion animals although they are exempt from the requirements of identification and registration under the *Companion Animals Act 1998* (NSW) (“the CAA”).

9.208 Before any regulations are made prescribing such guidelines, the AWA Council and, where relevant, representatives of the livestock industry must be given an opportunity to review and comment on the provisions of the proposed regulation which will establish the guidelines or code of practice.<sup>980</sup>

9.209 The AWA Council is a non-statutory committee established for the purpose of providing the State Government with advice in relation to animal welfare matters. The Council comprises representatives from industry, government, animal welfare organisations and professional bodies. It is expected to provide a spectrum of views and balanced advice. There is an independent Chair appointed by the Minister for Primary Industries and eleven member positions.

9.210 Compliance or failure to comply with a guideline or code of practice can be relevant in two ways.

9.211 First, compliance, or failure to comply with guidelines or a code of practice is admissible in evidence in proceedings under the POCTAA of compliance, or failure to comply, with the POCTAA or the POCTAR.<sup>981</sup>

9.212 Second, if the guidelines or a code of practice concern a business of conducting an “animal trade”, then a failure to comply will give rise to criminal liability.<sup>982</sup> The following matters should be noted:

- The expression “animal trade” is defined to mean:

A trade, business or profession in the course of which any animal is kept or used for a purpose prescribed for the purposes of this definition.<sup>983</sup>

- Each purpose referred to in Column 1 of Schedule 1 of the POCTAR is prescribed for the purposes of the definition of “animal trade”.<sup>984</sup>
- “Purpose” referred to in Column 1 of Schedule 1 is defined by reference to a business and each such business is covered by a code of practice.<sup>985</sup> Two codes are potentially relevant in relation to greyhounds, namely:

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<sup>979</sup> POCTAA s. 34A(1).

<sup>980</sup> POCTAA s. 34A(2).

<sup>981</sup> POCTAA s. 34A(3).

<sup>982</sup> Similar provisions are contained in Part 4, Division 4 of the *Domestic Animals Act 1994* (Vic.). Section 63A creates an offence of failing to comply with a code of practice and was the subject of comment by Dr Milne. The *Domestic Animals Act 1994* (Vic.) defines a “domestic animal business” as (a) an animal shelter, Council pound or pet shop; or (b) an enterprise which carries out the breeding of dogs or cats to sell, other than GRV greyhounds, where

<sup>983</sup> POCTAA s. 4.

<sup>984</sup> POCTAR cl. 25.

<sup>985</sup> POCTAR Sch. 1.

- (i) the enforceable Boarding Code (the purpose being a business in the course of which dogs or cats are boarded for a fee or reward); and
  - (ii) the enforceable Breeding Code (the purpose being a business in the course of which dogs or cats are bred for fee or reward).
- Clause 26 of the POCTAR imposes an obligation on the proprietor of a business that conducts an animal trade and each person concerned in the management of the business to comply with certain minimum welfare standards and to ensure that others engaged in the business also do so.
  - The welfare requirements prescribed by cl. 26 of the POCTAR are:
    - (a) the premises in which animals are kept must be maintained in a clean and hygienic condition,
    - (b) appropriate records must be kept to ensure that the care and treatment of animals can be properly monitored,
    - (c) each animal is to be provided with accommodation and equipment that is suited to the physical and behavioural requirements of the animal,
    - (d) each animal is to be protected from extreme climatic and environmental conditions and from interference by people,
    - (e) each animal is to be provided with sufficient space within which to rest, stand, stretch, swim, fly or otherwise move about,
    - (f) each animal is to be provided with a sufficient quantity of appropriate food and water to maintain good health,
    - (g) each animal must be protected from exposure to disease, distress and injury and, in the event that the animal becomes diseased, distressed or injured, must be promptly provided with appropriate treatment,
    - (h) each animal must be periodically inspected to ensure that it is receiving appropriate food and water and is free from disease, distress and injury,
    - (i) without limiting the requirements of paragraphs (a)–(h), **the provisions of each relevant Code of Practice or of the relevant Standards must be complied with.**<sup>986</sup>  
[Emphasis added]

9.213 Codes of practice developed in consultation with the AWA Council pursuant to s. 34A of the POCTAA extend the reach of the POCTAA well beyond offences of cruelty and aggravated cruelty. Breach of the minimum standards contained in the enforceable codes of conduct may give rise to criminal liability under cl. 26 of the POCTAR. The maximum penalty for a breach is \$22,000 in the case of a corporation and \$5,500 in the case of an individual. Further, a breach of cl. 26 of the POCTAR can also provide the basis for the issue of a PIN where it appears to an inspector that a person has committed certain offences prescribed by the regulations as a “Penalty Notice Offence”.<sup>987</sup> A breach of cl. 26 of the POCTAR is a Penalty Notice Offence,<sup>988</sup> with a penalty of \$500 in the case of individuals and \$1,500 in the case of corporations. PINs are intended to be issued in the case of minor infringements.

9.214 As has already been noted, both the enforceable Boarding Code and the enforceable Breeding Code have application in relation to aspects of a greyhound’s lifecycle. To a degree, they have been used by GRNSW to develop its own codes of practice.

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<sup>986</sup> POCTAR cl. 26(3).

<sup>987</sup> POCTAA s. 33E.

<sup>988</sup> POCTAR cl. 32.

- 9.215 By no stretch of the imagination do these particular statutory codes of practice address all aspects of a greyhound's welfare. There is nothing of substance in them which address rearing, breaking-in/education or training.
- 9.216 As currently framed, cl. 26 of the POCTAR is not conducive to the creation of a comprehensive code of practice which sets minimum standards to cover the lifecycle of a greyhound. Clause 26 is limited to prescribing standards of care for persons who own or are concerned in the management of a "business that conducts an animal trade". Currently, codes of practice that may be developed by the AWA Council and thereby achieve statutory force will also be limited in this way. That is, they will be limited by reference to the conduct or management of an animal trade. They cannot set minimum welfare standards which cover the full lifecycle of a greyhound, much of which might occur away from any animal trade business.
- 9.217 The codes of practice in Schedule 1 of the POCTAR deal with particular establishments such as boarding and breeding businesses. Whilst greyhounds might spend some of their lives in establishments which fit these descriptions, their lives are not so limited. Participants in the industry may breed, rear, break-in and train their own greyhounds. No fee or reward is involved. Further, activities which form part of various lifecycle stages of greyhounds may take place at more than one location.
- 9.218 If there are to be enforceable standards covering the entire lifecycle of greyhounds then they should not turn upon whether the persons involved are in fact conducting a business (many are not), or the particular stage of the animal's lifecycle in which they are involved. Enforceable standards should turn upon whether the person or persons who have the care and control of the animal are involved in any aspect of its lifecycle, whether that be breeding, rearing, breaking-in/educating or training. If there is to be a comprehensive code of practice which applies to the entire lifecycle of greyhounds, then the POCTAR will require amendment.
- 9.219 The Commission recommends that an enforceable code of practice should be developed to replace the industry's two codes. The evidence and other materials considered by the Commission demonstrate that, if the industry is to continue, it must be developed as a priority and as soon as possible. It should be developed in consultation with the AWA Council, the Australian Veterinary Association and RSPCA. The greyhound industry regulator will need to be consulted. However, minimum standards cannot be set by reference to what the industry wants rather than what the greyhounds need.
- 9.220 If a single and enforceable "Greyhound Code of Practice" is to be developed pursuant to cl. 26 of the POCTAR, then it will need to extend to industry participants who do not conduct a greyhound business.
- 9.221 The Commission recommends that the POCTAR be amended to include the following cl. 26A:
- Any person who has the care, custody or control of any greyhound will be taken to be a proprietor of a business that conducts an animal trade whether or not that person has the care, custody or control of the greyhound for fee or reward.
- 9.222 The relevant "animal trade" appearing in Column 1 of Schedule 1 of the POCTAR should be described as follows:
- Greyhound establishment (that is, a business in the course of which greyhounds are bred, reared, educated or trained whether or not for fee or reward).
- 9.223 For the purposes of column 2 of Schedule 1, the Code of Practice might be described as:
- Animal Welfare Code of Practice – Breeding, Rearing, Educating and Training Greyhounds

- 9.224 The Commission received a number of submissions concerning what an enforceable code of practice should contain. Although the precise contents will need to be developed by the AWA Council and those welfare organisations with which it consults, the Commission considers that it should, as a minimum, extend to the matters identified in the Milne Report.<sup>989</sup> Those matters were breeding, rearing, breaking-in, training, racing and retirement. As was noted by Dr Milne, it should specifically address exercise, socialisation, enrichment needs, transportation, handling, minimum standards for the different types and sizes of establishments, management of retired greyhounds and euthanasia. In other words, the code of practice must establish welfare standards for the entire lifecycle of each greyhound that is purpose bred to race.
- 9.225 There is one further matter which should be added to Dr Milne’s list. Not only should the regulator be obliged to maintain complete lifecycle records but so should industry participants. The format will need to be settled. However, the code of practice must impose this obligation on all industry participants who have the care or control of any greyhound at any point in time. The record should travel with the animal throughout its lifecycle, and those involved in various stages of its development will need to complete it, be they owners, trainers, rearers, educators or veterinary practitioners.

## Relationship between GRNSW and RSPCA

### Memorandum of Understanding – background

- 9.226 By September 2009, GRNSW had expressed interest in developing a formal relationship with RSPCA NSW purportedly as “part of its ongoing commitment to animal welfare”.<sup>990</sup>
- 9.227 Mr Bill Fanning (former General Manager, Integrity & Racing, Mr O’Mara (then, the Member Services Manager) and Mr Clint Bentley (former Chief Steward) met with representatives of RSPCA NSW on 4 September 2009.<sup>991</sup> It is not clear who attended the meeting on behalf of RSPCA NSW other than Mr OShannessy.
- 9.228 During the course of that meeting, the prospect of a MOU between GRNSW and RSPCA NSW was discussed. It was contemplated that it might include processes which would permit “scrutiny of licensee’s records in relation to welfare issues not appearing in probity checks from the National Police Records” and that RSPCA NSW might provide stewards with training on minimum care standards whilst conducting inspections, and on identification and reporting of breaches.<sup>992</sup>
- 9.229 RSPCA NSW also proposed that GRNSW introduce its own code of practice in relation to the keeping and welfare of greyhounds to give guidance to participants on matters such as building kennels to local government standards, size and suitability for the keeping of greyhounds, as well as categorising the activities of participants.<sup>993</sup>
- 9.230 A report of the meeting with RSPCA NSW was provided to the Board of GRNSW.<sup>994</sup> It included a copy of a Power Point presentation.<sup>995</sup> That Power Point presentation is addressed in Chapter 9, together with the Power Point presentation delivered by GRNSW to RSPCA Inspectors later in

<sup>989</sup> Milne Report, p. 19.

<sup>990</sup> Ex T (28 September – 2 October 2015).

<sup>991</sup> Ibid.

<sup>992</sup> Ibid.

<sup>993</sup> In fact, as has already been noted, there was already a code of practice that had been developed by the GHRRA in 2006. It was known as the “Animal Welfare Policy”. According to Professor Percy Allan AM, the document was largely based on GRNSW’s work (1 October 2015: T362.31-36) and, he said, at GRNSW’s insistence (1 October 2015: T362.28-29).

<sup>994</sup> Ex T (28 September – 2 October 2015).

<sup>995</sup> The references to live baiting are addressed in Chapter 3.

the month. Much, but not all, of this latter presentation was the same as that given in the meeting on 4 September 2009. A notable omission was a number of “future steps” which would be taken by GRNSW moving forward.

- 9.231 On 4 September 2009, Mr O’Mara was invited to attend the annual RSPCA Inspectors Conference, which was to be held on 16 September 2009.<sup>996</sup> The Coordinator of GAP was also present.<sup>997</sup> GRNSW informed the Commission that the conference was to be the first step in building a relationship with RSPCA NSW and the development of a MOU for the sharing of intelligence.<sup>998</sup>
- 9.232 During the Inspectors Conference, a series of Power Point slides were presented by Mr O’Mara to the RSPCA Inspectors.<sup>999</sup> That document is of significance. It was created a little more than two months after the commencement of the Act. It repeated much of the Power Point Presentation of 4 September 2009.
- 9.233 A key point made during the presentation was that participants<sup>1000</sup> had “a passion for the greyhound and concern for their long term welfare”.<sup>1001</sup> Participants may have a passion for their greyhounds but the Commission is satisfied that a number did not and do not have concerns for the long term welfare of their greyhounds. A number of examples could be cited. They include the keeping of greyhounds in poor conditions, poor breeding and rearing practices, overbreeding and the destruction of young greyhounds for minor injuries or because they do not perform.
- 9.234 The presentation also noted that the “potential” existed for “a ‘closed shop’ mentality to develop which may result in a culture that is out of touch with community standards in relation to animal welfare”.<sup>1002</sup> It was not merely a potential. The Commission is satisfied that it represented industry culture then and, by and large, it represents the industry culture now. Mr Newson gave evidence to the Commission regarding a number of industry forums which he attended following his appointment. Some participants indicated to him that they still supported live baiting; speaking of the views of, a “very vocal minority”.<sup>1003</sup>
- 9.235 The presentation further noted that GRNSW was “committed to working with participants to facilitate the ongoing education, development and implementation of welfare initiatives”.<sup>1004</sup> It also stated that there was a “need for GRNSW to drive cultural change and education at grass roots level for all members of the industry”.<sup>1005</sup> Further, there needed to be “[g]reater emphasis on sustainable breeding education”.<sup>1006</sup> Until the *Four Corners program* in February 2015, there was little by way of ongoing education, development and implementation of welfare initiatives.
- 9.236 GRNSW also claimed in its presentation to RSPCA NSW that it was committed to “developing policies and initiatives that ensures the accountability of Greyhound Welfare across the whole lifecycle”,<sup>1007</sup> and that it had “zero tolerance in relation to non-compliance to (sic) welfare

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<sup>996</sup> Ex MMM (17-18 February 2016).

<sup>997</sup> Ex QQQ (17-18 February 2016).

<sup>998</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>999</sup> Ex QQQ (17-18 February 2016).

<sup>1000</sup> Said to be 95% “hobbyists”.

<sup>1001</sup> Ex QQQ (17-18 February 2016).

<sup>1002</sup> Ibid.

<sup>1003</sup> 2 October 2015: T404.20-44; Mr O’Mara gave evidence of a similar experience during industry forums during Project Welfare in 2011.

<sup>1004</sup> Ex QQQ (17-18 February 2016).

<sup>1005</sup> Ibid.

<sup>1006</sup> Ibid.

<sup>1007</sup> Ibid.

issues”.<sup>1008</sup> If GRNSW genuinely had the commitment referred to above, it failed to achieve it. As noted in Chapter 11, the lifecycle of the majority of greyhounds bred to race comes to an end at some point before they reach the age of 4.5 to five years and, even during that short period, there was little that GRNSW achieved to ensure that the welfare needs of the animals were being met. It tolerated the non-observance of welfare standards by industry participants. It was only in 2015 that it sought advice from the Working Dog Alliance (“WDA”) in respect of best practice for rearing, socialisation, education and training methods in a racing context.<sup>1009</sup> And it is questionable whether GRNSW really needed to obtain advice in relation to some of these matters. GRNSW was well aware of the significance of the application of proper welfare standards in the early stages of a greyhound’s development. This is clear from the evidence of Mr O’Mara.

- 9.237 GRNSW also presented to RSPCA NSW on the breeding and rearing of greyhounds. It claimed that GRNSW had “... highlighted the need to further develop systems and strategies to strengthen the monitoring of greyhounds during this key period”.<sup>1010</sup> There is no doubt that the earlier months in a greyhound’s lifecycle are critical to its future health, wellbeing and its prospects of rehoming. GRNSW did nothing to monitor the welfare of greyhounds during this critical period. Often the only contact between GRNSW and a pup was for the purpose of inserting microchips and branding them with an ear tattoo. Once registered, GRNSW would have no further contact with the animal until it raced. That remains the position.
- 9.238 GRNSW went on to note that, in the interests of greyhound racing, it was necessary to “[s]eek registration of education and training centres”.<sup>1011</sup> This would include improving education levels on welfare issues of “... persons involved in the early development of Greyhounds”.<sup>1012</sup> Significantly too, it also noted the need to “[e]radicate the historic practice of the use of live animals in training” at such establishments.<sup>1013</sup> GRNSW failed on all counts. Although rearers and educators must now be licenced as “breeders” and, according to GRNSW, will be issued with transitional licences from July 2016, breaking-in establishments are still unregistered and there is no mandatory education of those who run them. Although the GRNSW Breeding Code (addressed above) was published on 1 July 2015, it prescribes minimum standards only. It is inadequate to meet the needs of young greyhounds. The historical practice of live baiting continued. As has been noted, much of the footage shown in the *Four Corners program* was taken at breaking-in or education facilities.
- 9.239 During the presentation to RSPCA NSW, GRNSW also stressed that there was a need to have regular kennel inspections focusing on locations away from noise and pollution, thermal comfort, lighting, ventilation and security, adequate size allowing freedom of movement (at least three square metres), diet and food storage, the proper labelling of approved substances which might be administered, with a claim that there was “... ZERO tolerance for improper use”.<sup>1014</sup> The use of prohibited substances and other non-veterinary products is addressed in Chapters 17 and 20.
- 9.240 There never has been a focus on regular kennel inspections.<sup>1015</sup> In 2010 GRNSW adopted a protocol, to commence from 1 July 2011, to increase kennel inspections to once in every two years for all licensed participants. That was not achieved.

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<sup>1008</sup> Ex QQQ (17-18 February 2016).

<sup>1009</sup> Ex S (17-19 November 2015).

<sup>1010</sup> Ex QQQ (17-18 February 2016).

<sup>1011</sup> *Ibid.*

<sup>1012</sup> *Ibid.*

<sup>1013</sup> *Ibid.*

<sup>1014</sup> *Ibid.*

<sup>1015</sup> Kennel inspections are addressed in Chapter 22.

- 9.241 The Commission received evidence and other material suggesting that some industry participants had never been the subject of inspections. Others had not been inspected for decades. A number of these industry participants had been involved in live baiting.
- 9.242 In its August 2015 submission to the Commission, GRNSW noted that the “frequency of industry inspections and interaction with an industry participant is a relevant consideration.” It claimed, however, that:
- ... high volume inspection targets are illusory and inconsistent with contemporary regulatory practice and merely increasing the volume of regulatory inspections is not sufficient to improve oversight of the industry.<sup>1016</sup>
- 9.243 GRNSW further submitted that an effective compliance program needed to apply:
- ... a range of monitoring and assurance measures, be driven by a sound appreciation of industry risks and target limited resources accordingly while investing in proactive engagement and education activities.<sup>1017</sup>
- 9.244 GRNSW claimed that its:
- ... failure to detect and respond to misconduct was due to the absence of an appropriate risk based and outcomes focussed approach to compliance and enforcement with the QRS Initiative...<sup>1018</sup>
- 9.245 The Commission is required to have regard to the Quality Regulatory Services (“QRS”) Initiative including the requirement for outcome-focussed and risk-based approaches to compliance and enforcement.<sup>1019</sup> It understands that GRNSW is in the course of implementing intelligence-led, outcomes-focussed and risk-based approach to kennel inspections.
- 9.246 The Commission agrees that an intelligence-led, outcomes-focussed and risk-based approach is beneficial, particularly in relation to preserving resources. However, the Commission also considers that the frequency of inspections is critical in this industry. Industry participants were prepared to live bait and keep their greyhounds in sub-optimal conditions because they considered that the prospect of being inspected, or being inspected without notice, was remote. That will continue if industry participants are led to believe that they will not be inspected unless GRNSW receives “intelligence” that they should be inspected.
- 9.247 Some – perhaps many – industry participants have shown a reluctance to engage in welfare improvements, whether by education or otherwise. They have displayed considerable animosity and mistrust towards GRNSW. It is unlikely that they would be prepared to engage with the regulator any more than is essential. Furthermore, in respect of live baiting, for example, there was an industry code of silence. Many participants told the Commission that live baiting in the industry was widespread, yet none of them took any steps to inform GRNSW. Live rabbits were being sold to trainers at Appin Trial Track. It did not require any imagination to guess what the ultimate purpose of these sales was, yet no one brought it to the attention of GRNSW. The prospect that the regulator would be able to obtain sufficient reliable intelligence from industry participants to gain a sound appreciation of industry risks and, more importantly, those individuals who might compromise the welfare of their animals, is not credible. It is also not credible to suggest that GRNSW’s failure to respond to misconduct was due to the absence of a risk based and outcomes focussed approach to compliance and enforcement. The Commission considers that it failed primarily because its compliance and inspection functions were

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<sup>1016</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [346].

<sup>1017</sup> Ibid.

<sup>1018</sup> Ibid. The reference to the “QRS Initiative” is a reference to C2014-06 Quality Regulatory Services Initiative – Guidance for NSW regulators to implement outcomes and risk-based regulation”, published by the NSW Department of Premier and Cabinet.

<sup>1019</sup> TOR 3.

chronically under resourced,<sup>1020</sup> and because welfare was not, in truth, considered to be a priority.

9.248 During the Inspectors Conference with RSPCA NSW, GRNSW also committed to developing “... close alliances with bodies such as the RSPCA to ensure the ongoing welfare of greyhounds as a breed”.<sup>1021</sup> GRNSW did develop a relationship of sorts with RSPCA NSW. It is addressed below, as is the proposed MOU. GRNSW did not develop a close alliance with any other welfare body.

9.249 In describing the way forward, or “Next Steps” as it was called, GRNSW noted that:

- There would be the development of a new Animal Welfare Policy by February 2010 to replace the 2006 GRNSW Animal Welfare Policy.<sup>1022</sup> No new policy was developed, although aspects of it were incorporated into the GRNSW Training Code. That was not published until April 2011.
- GRNSW would work with RSPCA to develop a code of practice to cover all aspects of a greyhound’s lifecycle.<sup>1023</sup> That never happened. It remains the case that there is no code of practice covering the entire lifecycle of greyhounds. On 24 January 2011, GRNSW sent a copy of a draft of the GRNSW Training Code to Mr OShannessy for comment.<sup>1024</sup> There was no formal written response although Mr OShannessy did discuss the document with Mr O’Mara. This has been addressed earlier in this Chapter. The email from GRNSW noted that there was to be a code of practice developed to cover “operators throughout a greyhounds (sic) lifecycle”. It was to include breeding, rearing and racing.<sup>1025</sup> No thought was given by GRNSW to any code of practice to cover the welfare of greyhounds post-retirement. As has been noted, the GRNSW Training Code was published in April 2011. No Code of Practice for Breeding, Rearing and Education<sup>1026</sup> was published until 1 July 2015.
- GRNSW would work with RSPCA NSW to gain a greater understanding of community-based animal welfare issues.<sup>1027</sup> It is not clear whether this occurred or why GRNSW thought it necessary. Certainly, by the time of the Select Committee, the submissions of interested parties must have put to rest any remaining questions concerning community expectations.
- RSPCA NSW and GRNSW would work together to improve the transfer of information between them.<sup>1028</sup>

9.250 There were four matters which were not contained in the presentation slides for the 16 September 2009 Inspector’s Conference which had been in the slides for the 4 September meeting with RSPCA NSW.<sup>1029</sup> They too were described as next steps. They were significant. None of these steps were taken:

- Minimum formal meeting every six months
- Industry Reporting
- Introduction of lifetime data tracking

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<sup>1020</sup> Ex WW (17-18 February 2016), p. 6.

<sup>1021</sup> Ex QQQ (17-18 February 2016).

<sup>1022</sup> Ibid.

<sup>1023</sup> Ibid.

<sup>1024</sup> Ex NNN (17-18 February 2016).

<sup>1025</sup> Ibid.

<sup>1026</sup> Education is not a reference to study or learning by industry participants. It is a euphemism for breaking-in a greyhound.

<sup>1027</sup> Ex QQQ (17-18 February 2016).

<sup>1028</sup> Ibid.

<sup>1029</sup> Ex T (28 September – 2 October 2015).

- GRNSW to focus on WELFARE as a priority.<sup>1030</sup>

9.251 At the RSPCA Inspectors Conference on 16 September 2009, a conference presentation was also given by the Coordinator of GAP. She also used Power Point slides. Attendees were informed that the aim of the program was to minimise euthanasia of both retired and non-competitive greyhounds that would be suitable as a pet.<sup>1031</sup> The point was made that the muzzle law (which then prohibited greyhounds from walking in public without a muzzle) was the major factor restricting growth in the number of non-racing greyhounds being assimilated into life after racing.<sup>1032</sup> There was an acknowledgment that GAP was only part of the solution to dealing with retired and non-competitive greyhounds. The GAP Coordinator’s slides contained the following:

The GRNSW’s GAP is only part of the solution, education of industry members, tracking of the greyhound at all stages of its lifecycle, improvement of data collection, identifying risk and improving integrity enforcement are key.<sup>1033</sup>

### The terms of the MOU – never finalised

9.252 GRNSW told the Select Committee that the MOU was entered into in 2010.<sup>1034</sup> It informed the Commission that the MOU was *signed* in January 2010 with RSPCA NSW.<sup>1035</sup> It then claimed that it entered into the MOU in April 2010.<sup>1036</sup> Later, it claimed that neither it nor RSPCA NSW could find a signed copy and that it was “...entirely unclear if this MOU was ever formally executed”.<sup>1037</sup>

9.253 An unsigned copy of the MOU was provided to the Commission.<sup>1038</sup> It bears a date on the first page. It is April 2010. The document is unsigned.<sup>1039</sup>

9.254 According to GRNSW, from 2010 to October 2011 the person responsible for administering the MOU on behalf of GRNSW was Mr Fanning (General Manager, Integrity) and that, from October 2011 to 2015, the person who took over that role was Mr O’Mara (as the General Manager, Growth and Sustainability, and later as renamed General Manager, Education & Welfare). GRNSW claimed that the person who administered the MOU on behalf of the RSPCA NSW was Mr OShannessy.<sup>1040</sup>

9.255 RSPCA NSW provided very different information to the Commission. It informed the Commission that there has never been any finalised or executed MOU between GRNSW and RSPCA NSW. The development of a draft MOU between RSPCA NSW and GRNSW commenced in early 2010 but it never went beyond a draft. It has not been signed or formally adopted by either party. The Commission was provided with a copy of the last version of the draft held by RSPCA.<sup>1041</sup> It is undated and unsigned.

9.256 Mr O’Mara informed the Commission that he had regular contact with Mr OShannessy.<sup>1042</sup> There was intelligence sharing. GRNSW would check with RSPCA NSW whether applicants for a new licence or those coming back from a suspension had any history of welfare issues. RSPCA NSW

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<sup>1030</sup> Ibid, p.85.

<sup>1031</sup> Ex QQQ (17-18 February 2016).

<sup>1032</sup> Ibid.

<sup>1033</sup> Ibid.

<sup>1034</sup> Select Committee, GRNSW Answers to Questions on Notice dated 13 December 2013.

<sup>1035</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>1036</sup> Ibid.

<sup>1037</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [385].

<sup>1038</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>1039</sup> No Memorandum of Understanding was negotiated with AWL.

<sup>1040</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>1041</sup> Ex CCC (17-18 February 2016).

<sup>1042</sup> 17 February 2016: T794.34-35.

and GRNSW would carry out a joint inspection if there was “an alleged welfare case”.<sup>1043</sup> Although the MOU had not been finalised, it was followed from an “operational perspective”. Nothing sought by Mr OShannessy was denied. Mr O’Mara was unaware of the reason why the MOU was never finalised.<sup>1044</sup>

- 9.257 Mr OShannessy also gave evidence in relation to the exchange of information with GRNSW. He informed the Commission that, from time to time, he would liaise with GRNSW to obtain information in relation to registered participants and also the identification of greyhounds that RSPCA NSW encountered as part of its investigation of complaints. In 2009 there were no impediments to the supply of information.<sup>1045</sup> Requests by GRNSW for information concerning whether an industry participant had a welfare history were met. RSPCA NSW would also supply information where it had investigated an industry participant and that had led to a prosecution.<sup>1046</sup>
- 9.258 Mr OShannessy told the Commission that the MOU was not finalised because there were “challenges” in it in relation to privacy and confidentiality. RSPCA NSW inspectors had law enforcement powers and responsibilities. GRNSW was not a law enforcement agency. Mr OShannessy was concerned that it might not be appropriate to release information to such a body. Ultimately, further negotiation of the MOU “slipped off the agenda”.<sup>1047</sup>

#### *Exchange of personal information*

- 9.259 Whether or not GRNSW and RSPCA NSW were acting within the spirit of the MOU, it is clear that both the April 2010 MOU provided to the Commission by GRNSW and the undated MOU provided by RSPCA NSW are draft documents only. Apart from the fact that neither document is signed, there were significant sections of the draft that were to impose obligations upon GRNSW to provide personal information concerning industry participants to RSPCA NSW which were left blank.
- 9.260 In an RSPCA investigation of welfare offences, personal information concerning the identification and ownership of a greyhound and the address and contact details of the owner could be crucial. And it is information which RSPCA NSW might otherwise be unable to obtain. As has been noted, registered greyhounds are currently not required to be registered under the CAA, which means that RSPCA NSW cannot otherwise readily obtain that information. If GRNSW was unwilling to provide that basic information, the MOU would be all but worthless to RSPCA NSW.
- 9.261 The draft MOU suggests that there may have been a reluctance on GRNSW’s part to agree to an unqualified obligation to provide personal information. This may have been referable to its Privacy Policy.
- 9.262 Although the Privacy Policy which then existed permitted disclosure of personal information in relation to unlawful activity, it was predicated upon an investigation being first carried out by GRNSW. Relevantly, the policy provided that personal information might be disclosed if:

GRNSW has reason to suspect that unlawful activity has been, is being, or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the incident for reporting its concerns to relevant authorities.<sup>1048</sup>

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<sup>1043</sup> 17 February 2016: T795.10.

<sup>1044</sup> 17 February 2016: T796.33-34.

<sup>1045</sup> 17 February 2016: T796.11.

<sup>1046</sup> 18 February 2016: T886.21-23.

<sup>1047</sup> 18 February 2016: T886.3-4.

<sup>1048</sup> GRNSW website, “Privacy Policy”: <<http://www.thedogs.com.au/Uploads/Userfiles/Privacy%20Policy.pdf>> (accessed 24 May 2016).

- 9.263 The Commission did not receive any evidence that GRNSW had in fact refused to supply personal information relating to the identification of greyhounds or industry participants. It is clear that, from time to time, it did so. However, the supply of such information should not be discretionary. The obligation should be absolute.
- 9.264 On 10 March 2016, GRNSW's amended Privacy Policy commenced. It is addressed in Chapter 8 in relation to the CAA.

### **Key objectives**

- 9.265 The draft MOU sets out the following "key objectives":
- a) Adopt a pro-active approach to greyhound welfare in NSW
  - b) Develop the relationships and communications between the organisations
  - c) Ensure enforceable welfare policies are in place
  - d) Develop policy and education in the area of greyhound welfare
  - e) Encourage responsible breeding within the industry in order to reduce numbers of greyhounds unsuitable to race
  - f) Co-ordinate training and education between the staff of each organisation and any associated officials or other persons
  - g) Co-operate with intelligence on suspected breaches of greyhound welfare
  - h) Develop the Greyhound as Pets program and increase the number of greyhounds rehomed under this program
  - i) Pursue laws and projects which promote the welfare of greyhounds in the industry
  - j) Ensure adherence to relevant legislation and privacy provisions<sup>1049</sup>
- 9.266 GRNSW informed the Select Committee that these were the "objectives" of the MOU it had entered into.<sup>1050</sup>
- 9.267 In contrast, GRNSW informed the Commission that seven of those objectives – namely, (a), (b), (c), (f), (g), (i) and (j) – demonstrated the key role which RSPCA NSW had *in fact* played in "the investigation area". GRNSW did not draw attention to the fact that these claimed achievements were drawn from the draft MOU and that they were no more than joint objectives. A number were objectives that could only have been achieved jointly, those not referred to when providing information to the Commission - (d), (e), and (h) - could only have been achieved by GRNSW, and most were not in fact achieved.
- 9.268 The materials reviewed by the Commission suggest that, at least until the broadcast of the *Four Corners program*, the occasions upon which GRNSW shared intelligence with RSPCA NSW were limited. The Commission considers that the relationship between GRNSW and RSPCA NSW was less than what it should have been.<sup>1051</sup> Two striking examples are provided below. One concerned the Keinbah Trial Track. The other concerned GRNSW's failure to hand over information to RSPCA NSW to facilitate its investigations into live baiting following the *Four Corners program*.
- 9.269 Neither RSPCA NSW nor GRNSW adopted a focused approach to greyhound welfare. RSPCA NSW was, and remains, a complaints-based organisation. This is understandable having regard to its limited resources, its workload and the fact that its charter extends well beyond the welfare of

<sup>1049</sup> Ex CCC (17-18 February 2016).

<sup>1050</sup> It did not provide a copy of the MOU to the Select Committee, nor did it describe its operative parts: Select Committee, GRNSW Answers to Questions on Notice dated 13 December 2013.

<sup>1051</sup> GRNSW's investigation into the Keinbah Trial track is an example.

greyhounds. It is unacceptable that the regulator of the industry, GRNSW, took the same approach.

9.270 In relation to the investigation of possible breaches of welfare standards, the only steps taken by GRNSW were its haphazard and limited inspection regime, the development of a rudimentary code of practice, and the regular restatement of aspirations and strategies which were never realised.

9.271 The extent of GRNSW's commitment to welfare can be assessed not only by reference to the fact that it failed to formally commit to simple obligations for the supply of personal information and intelligence to RSPCA NSW. It can also be assessed by reference to the limits placed on other obligations which are contained in the draft MOU.

9.272 Although GRNSW was to assist RSPCA NSW in relation to its investigations where assistance was "reasonably" required, that obligation needs to be considered in context. The context is the control which GRNSW would exercise over whether there would be an RSPCA NSW investigation at all.<sup>1052</sup>

9.273 Referral of a complaint from GRNSW to RSPCA NSW depended on prior "validation" by GRNSW. It told the Commission that the "historical process" required:

... complaints to be assessed and validated by a senior compliance officer from GRNSW prior to a referral to the RSPCA. In most instances GRNSW would have at least carried out a property inspection prior to referral to the RSPCA.<sup>1053</sup>

9.274 The fact that the level of future co-operation between GRNSW and RSPCA NSW would be governed by what had occurred in the past says much about GRNSW's true level of commitment to ridding the industry of those participants that failed to ensure that the welfare needs of their greyhounds were met. So too does the fact that no information would be supplied by GRNSW to RSPCA NSW until there had been validation by GRNSW. That GRNSW could desist from supplying information to RSPCA NSW until, at the very least, it had carried out its own property inspection, had the capacity to compromise any subsequent investigation by RSPCA NSW.

9.275 GRNSW also informed the Commission that to ascertain whether a complaint had sufficient "detail" to be referred to RSPCA:

... a GRNSW compliance officer normally assesses and inspects/investigates complaints and information received by GRNSW in the first instance. Depending on the outcome of that process, a decision is made on whether sufficient information is available to refer the matter to the RSPCA.<sup>1054</sup>

9.276 In fact, the draft MOU made it plain that there could be no investigation by RSPCA NSW until there had been an investigation by GRNSW. Referral to RSPCA NSW was discretionary. It provided as follows:

Where it is reasonable and appropriate to do so, Greyhound Racing NSW will notify RSPCA NSW of any allegations or incidents of animal ill treatment, or any other significant animal welfare issues, in connection with the greyhound racing industry. Such notification may not be provided until after any investigation is completed and notification will be subject to the principles of the GRNSW Privacy Policy.<sup>1055</sup>

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<sup>1052</sup> Ex CCC (17-18 February 2016).

<sup>1053</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>1054</sup> Ibid.

<sup>1055</sup> Ex CCC (17-18 February 2016).

- 9.277 It is RSPCA NSW, not GRNSW, which is charged with responsibility for investigation of possible breaches of the POCTAA. It has extensive powers which assist in that process. GRNSW does not have those powers. RSPCA NSW is independent of the industry. GRNSW is not. It should have been RSPCA NSW, not GRNSW, which decided whether a complaint should be taken further. And if GRNSW had genuine concerns for the welfare of greyhounds, it would have done everything reasonably possible to facilitate that process. No doubt there would have been occasions where a complaint could not have been taken further. However, it should have been RSPCA NSW which made that decision without GRNSW first deciding that question.
- 9.278 The draft MOU contemplated that GRNSW officers would accompany and assist RSPCA NSW inspectors in connection with inspections or investigations of greyhound kennels, breeders and trainers (presumably their premises) as reasonably requested by RSPCA NSW. It would also provide such assistance as was reasonably requested by RSPCA NSW in connection with the investigation of animal welfare issues. Reciprocal obligations were to be imposed upon RSPCA NSW although they were qualified by an important caveat: RSPCA NSW was to maintain its complete and unfettered right to investigate reports of animal mistreatment, conduct routine inspections, and perform such other actions as it deemed appropriate in connection with the administration and enforcement of the POCTAA.
- 9.279 GRNSW informed the Commission that it had commenced negotiations with RSPCA NSW to conduct joint raids and kennel visits.<sup>1056</sup> This is more than is reflected in the draft MOU.
- 9.280 GRNSW also informed the Commission that, from 2009-2011, stewards would investigate complaints or information received concerning the welfare of greyhounds and would exercise its own discretion in deciding on a potential breach of the rules. It said that reports *from* RSPCA NSW had been relied upon since 2011.<sup>1057</sup> As the Keinbah investigation shows, this is incorrect.

#### ***The Keinbah investigation***

- 9.281 The Keinbah investigation occurred in circumstances where no report had been received by GRNSW from RSPCA NSW. RSPCA NSW became aware, belatedly, that there may have been significant welfare issues at the Keinbah Trial Track. More particularly, an anonymous complaint was received by RSPCA NSW on 13 February 2014 against a then current GRNSW employee that there was a mass grave on the property and that the greyhounds were living in filthy kennels and drinking their own urine. There was also an allegation that a greyhound had been mistreated by the employee's father.<sup>1058</sup>
- 9.282 If known to GRNSW (which it was), this is precisely the sort of complaint which GRNSW should have immediately referred to RSPCA NSW. Each allegation was serious but particularly an allegation that a current employee was involved in a mass grave for greyhounds. It was precisely that sort of allegation which led to the discovery of a mass grave in Seaham, County Durham, and the establishment of the inquiry conducted by Lord Donoghue of Ashton on behalf of the British Greyhound Racing Board and the National Greyhound Racing Club in 2007.
- 9.283 Upon receiving the complaint, an Inspector from RSPCA NSW attended the premises only to be informed by the occupants that GRNSW had been there the previous day. The occupants, who had recently purchased the property, were concerned that there would be a "cover up" by GRNSW, as the employee of interest was a Welfare Officer. The RSPCA NSW Inspector then contacted the GRNSW Investigations Officer who had attended the property the previous day. He advised the RSPCA NSW Inspector that he had already interviewed the employee, who

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<sup>1056</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>1057</sup> *Ibid.*

<sup>1058</sup> RSPCA Response to Order 1 dated 25 May 2015.

admitted that there were approximately 20 greyhounds buried on the property but they were humanely euthanased. In fact, GRNSW's investigation was almost complete.<sup>1059</sup>

- 9.284 On 13 and 14 February 2014, GRNSW's Investigations Officer had interviewed a number of persons who were allegedly involved, including the GRNSW employee. One of the allegations against that employee was that she had telephoned one of the occupiers and threatened her, suggesting that the occupant should get legal advice concerning an allegation against the employee's father for mistreating a greyhound. The employee admitted to making the call, but claimed that she had said that *she* was getting legal advice, not that the occupant *should obtain* legal advice.<sup>1060</sup>
- 9.285 GRNSW's Investigations Officer issued a Report on 7 March 2014. He stated that he did not find any evidence of a mass grave and, based on his assessment of the reliability of witnesses, the alleged mistreatment of a greyhound had not been substantiated. As to the employee's telephone call, he found that it was an error of judgment for which the employee was remorseful.<sup>1061</sup>
- 9.286 Significantly, GRNSW reopened the investigation in 2015 based on concerns as to the thoroughness of its investigation.<sup>1062</sup> That would not have occurred if it had done what it should have done immediately upon receipt of the complaint. It should have immediately referred the complaint to RSPCA NSW.

#### **Mr X's Diary**

- 9.287 In the days leading up to the *Four Corners program* on 16 February 2015, RSPCA carried out a number of raids. One raid concerned an education facility in Western Sydney operated by Mr X. He was subsequently charged with a number of live baiting offences.
- 9.288 During the course of the raid at Mr X's property, RSPCA NSW located a diary. It had entries in it consistent with the purchase of live rabbits. It also contained a lengthy list of Christian names and telephone numbers.
- 9.289 RSPCA NSW formed the view that the persons listed in the diary might be involved in live baiting. It therefore sought information from GRNSW. More particularly, it requested GRNSW to check the telephone numbers against the registration records held by GRNSW and provide the personal details of the persons identified.
- 9.290 The Commission is aware that such information existed. That is because it ordered GRNSW to provide the same information as had been sought by RSPCA NSW and it did so.<sup>1063</sup>
- 9.291 On any view, the information sought by RSPCA NSW was potentially valuable intelligence. It could have led to the detection and subsequent prosecution of further industry participants who had been involved in live baiting.
- 9.292 GRNSW refused to voluntarily provide the information to RSPCA NSW, with the result that this valuable intelligence was kept from it. In an email sent to an inspector of RSPCA NSW who was involved in the live baiting investigation, GRNSW's Acting General-Counsel indicated that he had "... formed the view that GRNSW may not be able to voluntarily provide the information at this time due to limitations imposed under applicable privacy law". The email went on to indicate

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<sup>1059</sup> "Beekman Keinbah Report": GRNSW Response to Order 19 dated 3 November 2015.

<sup>1060</sup> Ibid.

<sup>1061</sup> Ibid.

<sup>1062</sup> "Report – Inquiry into matters at the Keinbah Trial Track under Rule 92 of the GRNSW Greyhound Racing Rules": GRNSW Response to Order 19 dated 3 November 2015.

<sup>1063</sup> GRNSW Response to Order 9 dated 4 August 2015.

that if RSPCA NSW was to issue a notice pursuant s. 24NA of the POCTAA, the information would be provided.<sup>1064</sup>

9.293 Section 24N of the POCTAA gives power to inspectors appointed under the POCTAA to question persons if the inspector suspects on reasonable grounds that they have knowledge of matters in respect of which information is reasonably required for the purpose of, *inter alia*, determining whether the POCTAA had been contravened.

9.294 RSPCA NSW became concerned that an orchestrated arrangement to issue a statutory notice might prejudice the further investigation of those named in the diary. If the notice was invalidly issued, anything obtained in response to it might be regarded as evidence unlawfully obtained. Mr OShannessy informed the Commission that:

The RSPCA didn't believe that – the application of that section didn't apply to those circumstances, and we were mindful of potential court matters, that we didn't want to do anything that might be seen as an abuse of powers or inappropriate, in that it might jeopardise a pending investigation and court case.<sup>1065</sup>

9.295 The decision not to exercise power under s. 24NA was based on advice.<sup>1066</sup> RSPCA NSW had never in the past been required by GRNSW to exercise a statutory power in order to obtain information.

9.296 Whether or not the advice given to RSPCA NSW was the correct advice, the information sought should have been immediately provided to RSPCA NSW.

9.297 There are other examples where a complaint was received by GRNSW concerning possible breaches of welfare standards but not passed on to RSPCA NSW. Live baiting is an example. Some complaints concerning live baiting or the presence of small live animals were investigated by GRNSW without any prior involvement of RSPCA NSW, let alone receipt of a report from RSPCA NSW which GRNSW then actioned. GRNSW 'went it alone' so to speak. Some of those complaints were never referred to RSPCA NSW, even in circumstances where GRNSW had found live rabbits on the property.

9.298 The Commission is of the opinion that GRNSW should have referred all welfare complaints to RSPCA NSW for at least a preliminary assessment. It should not have carried out its own investigations. It was for RSPCA NSW to determine if it would carry out an investigation and whether that would be with or without GRNSW's involvement. There would have been nothing preventing GRNSW from conducting its own investigation if RSPCA NSW determined that it would not do so.

9.299 GRNSW informed the Commission that it has established a new Investigations Section, which was developing an investigations framework:

... which articulates governance arrangements around receipt and assessment of intelligence/complaints, conduct of investigations and determination of appropriate enforcement action including referral.<sup>1067</sup>

9.300 The regulator of the greyhound racing industry should gather intelligence. If it is of significant quality and concerns possible breaches of the POCTAA, it should be formally transmitted to RSPCA NSW or the AWL. However, the regulator should *not* conduct its own investigations and assessments of complaints concerning possible breaches of the POCTAA. Nor should it make

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<sup>1064</sup> David OShannessy, 18 February 2016: T888.18-36.

<sup>1065</sup> David OShannessy, 18 February 2016: T888.41-889.1.

<sup>1066</sup> David OShannessy, 8 February 2016: T899.42.

<sup>1067</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [387].

determinations as to whether or not those complaints should be referred to RSPCA NSW or the AWL. All complaints received by the regulator in relation to possible breaches of the POCTAA must be immediately referred to RSPCA NSW or the AWL for assessment. It should be up to those organisations to determine whether an investigation will proceed and, if so, the extent of the regulator's involvement.

- 9.301 It is important to distinguish between complaints and other information which might come to the attention of the regulator concerning possible breaches of the POCTAA; and information which might come to its attention suggesting that appropriate standards are not being met which fall short of offences under the POCTAA.
- 9.302 Kennel inspections are an essential tool for the protection of the welfare of greyhounds. Observations made by GRNSW during kennel inspections often showed that the minimum standards contained in the GRNSW Training Code were not being met, but that the matter fell short of criminal conduct. As RSPCA NSW made clear to the Commission, breaches of the GRNSW Training Code which fell short of possible offences under the POCTAA do not fall within its remit. Save where there are breaches of an enforceable code of practice, those matters must continue to be the subject of investigation by the regulator, as must all other matters concerning possible compliance failures.
- 9.303 RSPCA NSW informed the Commission that the majority of complaints received by it for alleged neglect or cruelty involving greyhounds were investigated by RSPCA NSW without the involvement of GRNSW. That is unsurprising. A body charged with the power to investigate welfare offences should have the discretion to decide whether or not the involvement of the body which regulates greyhound racing would benefit its investigation.
- 9.304 RSPCA NSW received 339 complaints which related to the welfare of greyhounds between July 2009 and 7 May 2015.<sup>1068</sup> Most complaints were received from members of the public. Some were received from other welfare agencies, the NSW Police Force and local councils. Two were received from GA.<sup>1069</sup> Only eight were received from GRNSW, three of those being after the *Four Corners program*.<sup>1070</sup> Generally, the complaints received by RSPCA NSW that related to greyhounds varied between 40 and 70 each year. There were nine joint property inspections, four of which occurred after the *Four Corners program*.<sup>1071</sup> On nine occasions, five of which occurred after the *Four Corners program*,<sup>1072</sup> GRNSW advised RSPCA NSW of the results of its own property inspections or investigations, sometimes after RSPCA NSW had already become aware following the making its own inquiries of GRNSW or others. One of the occasions upon which RSPCA NSW became aware of a GRNSW investigation after the event concerned the Keinhah Trial track and the GRNSW employee.<sup>1073</sup> It has already been addressed.
- 9.305 RSPCA NSW produced to the Commission records of the communications between GRNSW and RSPCA NSW. Apart from those instances where GRNSW was the complainant there were only nine complaints received by RSPCA NSW where significant communication between RSPCA NSW and GRNSW followed. The records in relation to these nine occasions reveal that sometimes RSPCA NSW did not contact GRNSW until it had commenced or concluded a prosecution. Sometimes GRNSW requested information from RSPCA NSW following media reports of welfare issues of which GRNSW was previously unaware.<sup>1074</sup>

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<sup>1068</sup> This date was the date of an Order from the Commission to RSPCA NSW to provide information.

<sup>1069</sup> RSPCA NSW, Response to Order 1 dated 25 May 2015.

<sup>1070</sup> *Ibid.*

<sup>1071</sup> *Ibid.*

<sup>1072</sup> *Ibid.*

<sup>1073</sup> *Ibid.*

<sup>1074</sup> *Ibid.*

- 9.306 RSPCA NSW also informed the Commission that it was not its practice to notify GRNSW of all complaints or information received by it concerning the welfare of greyhounds. It said that the majority of complaints did not relate to industry participants as the person of interest. RSPCA NSW stated that it did notify GRNSW of some of the complaints received by it alleging cruelty or neglect. As with all complaints received and investigated a reasonable proportion were unfounded and warranted no further action. RSPCA NSW also indicated that it had concerns in relation to sharing details of an unfounded complaint with GRNSW due to privacy restrictions. Notification generally occurred where neglect of greyhound welfare represented no more than breaches of the GRNSW Training Code or where RSPCA NSW required assistance to identify racing greyhounds or participants that were the subject of investigation.<sup>1075</sup>
- 9.307 There is little doubt that RSPCA NSW needed to consider what information would be provided to GRNSW and when it would be provided so as to protect the forensic integrity of its investigations. In circumstances where RSPCA NSW was aware that a GRNSW “investigation” and “validation” were conditions precedent to the supply of information, RSPCA NSW might well have wished to desist from notifying GRNSW that it was carrying out, or intended to carry out, an investigation. Early notice might seriously compromise an investigation.
- 9.308 This approach was adopted by RSPCA NSW in its investigation into live baiting shortly prior to the *Four Corners program*. RSPCA NSW informed the Commission that it did not notify GRNSW until after it had conducted inspections of three properties thought to be involved in live baiting because of the possibility that stewards and officials in other states might be involved in the practice, and because it wished to preserve the forensic integrity of its investigation.<sup>1076</sup> As the Commission understands, investigations in Victoria and Queensland were ongoing. RSPCA NSW’s concerns were not fanciful. Although it does not relate to interstate officials, one steward of GRNSW had recent involvement in live baiting, although there is no evidence that his involvement continued after his appointment.<sup>1077</sup>
- 9.309 There is little need to preserve forensic integrity where a prosecution has been commenced or a conviction secured. GRNSW should have been informed of the commencement of all prosecutions and the result so that it had the opportunity to take action under the rules as soon as possible. In fact, RSPCA NSW should have communicated with GRNSW at the conclusion of its investigation, as soon as it was satisfied that a complaint had been established and the matter was ready to proceed to Court. This did not occur on all occasions.
- 9.310 It should be noted that, following the *Four Corners program*, communication improved. In February 2015, RSPCA referred 46 matters to GRNSW where there were allegations of live baiting. There appears to have been cooperation between both bodies, particularly in relation to identification of a number of industry participants who appeared on film footage.
- 9.311 Although the draft MOU was never finalised, there are further aspects of it which are worthy of consideration if only to highlight again the difference between myth and reality; aspirations which were laudable but were never realised; aspirations which were significantly undermined by the operative clauses of the agreement. The aspirational statements in the draft MOU should have represented the reality in 2010. They did not, and many do not represent the reality today.

### **Agreed principles**

- 9.312 The draft MOU contained a number of “agreed principles”. In particular, GRNSW claimed that:

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<sup>1075</sup> Ibid.

<sup>1076</sup> Ibid.

<sup>1077</sup> Norm Becroft, 30 September 2015: T250.39-40.

- An integral aim of GRNSW was the enforcement of the greyhound rules of racing in relation to welfare, encouraging participant involvement in welfare and enhancing the welfare of greyhounds in NSW through adoption of standards applicable to community expectations.
- GRNSW was committed to promotion and protection of the wellbeing of greyhounds throughout their lifecycle.
- Those in charge of the care and management of greyhounds were required to be aware of their responsibilities and legal obligations to ensure the welfare of the animals in their care at all times and were required to act accordingly.
- Facilities for the housing and transport of greyhounds were required to be designed and maintained to provide a clean, comfortable and safe environment and to meet the behavioural, social and physiological needs of the particular animal.
- Training methods for greyhounds were to be based on techniques using natural instincts and positive reinforcement. Aversion therapy and physical punishment could not be used because of the potential for cruelty.
- GRNSW (and RSPCA) were in favour of the regulation of greyhound racing (including breeding, rearing, training and competition) to eliminate practices that caused injury, suffering or distress.
- GRNSW (and RSPCA) were opposed to hurdle races for greyhounds because of the potential for injury associated with this activity.
- GRNSW (and RSPCA) were opposed to the use of live animals as a bait or lure for the purpose of training, baiting and bleeding of greyhounds. Non-animal devices and products should be used for training purposes.
- GRNSW (and RSPCA) supported initiatives to promote responsible breeding and greyhound adoption within the greyhound racing industry.<sup>1078</sup>

9.313 Other Chapters address the extent to which a number of these aspirations were met by GRNSW. Put simply, GRNSW failed to meet most of them.

9.314 One of the “agreed principles” was that those in charge of the care and management of greyhounds must be aware of their responsibilities and legal obligations to ensure the welfare of the greyhounds in their care at all times and must act accordingly.

9.315 The MOU imposed obligations upon RSPCA NSW to educate industry participants. In accordance with the “responsibilities” section of the draft MOU, it was required to provide training and education to GRNSW staff and officials and to groups of greyhound breeders, trainers and owners as was “reasonably requested” by GRNSW. This was to include:

- Delivering seminars or presentations on the [POCTAA] and its application to the greyhound racing industry.
- Arranging placements for Greyhound Racing NSW animal welfare officers with RSPCA NSW inspectors in the field.
- Providing information brochures or other material about animal welfare, the [POCTAA] or other relevant matters.

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<sup>1078</sup> Extracted from Ex CCC (17-18 February 2016).

- Such other training or education as may be desirable.
- 9.316 There were reciprocal obligations imposed on GRNSW to ensure that RSPCA NSW was well informed in the operation of the industry. GRNSW also undertook to disseminate the “Greyhound Racing Code of Practice”.<sup>1079</sup>
- 9.317 Mr OShannessy informed the Commission that RSPCA NSW did not deliver any presentations, seminars, education or training to GRNSW or industry participants. Although RSPCA often gave presentations in relation to the POCTAA, it was never requested to do so by GRNSW.
- 9.318 Education of industry participants in relation to their welfare obligations and how to achieve them is important. Indeed, it is crucial and must be encouraged. The Commission is satisfied that a number of industry participants know little about the basic principles of animal care. Even more know little about important welfare issues that will arise during the rearing of the animal, such as the need to socialise young dogs. Those who have true welfare expertise must have a role in education. This is a matter where the regulator should not “go it alone” so to speak. The Commission notes that since November 2015 GRNSW has conducted a number of seminars where experts in training working dogs and canine physiotherapy have addressed industry participants. Further seminars have been scheduled.
- 9.319 In its submissions to the Commission, and proceeding upon the assumption that, whether or not it was signed, the MOU governed the relationship between it and RSPCA NSW, GRNSW acknowledged that the MOU was “deficient”. It had failed to develop a formally documented process to refer matters or exchange information with RSPCA. Further, the “arrangements” for referrals had not been adequately monitored and individual matters had not been the subject of appropriate reporting.<sup>1080</sup> GRNSW further acknowledged that:
- while GRNSW had referred matters to RSPCA these referrals were very informal, not documented and not accompanied by any briefs; and
  - there were no processes for GRNSW to follow up on these matters or be clearly informed about the outcome.<sup>1081</sup>
- 9.320 The Commission was informed that, in June 2015, GRNSW met with RSPCA NSW to commence discussions concerning the development of a further MOU, which GRNSW claims will facilitate:
- ... more robust arrangements for the exchange of information and immediate reporting of alleged and suspected animal cruelty issues in the greyhound industry...<sup>1082</sup>
- A further draft MOU was provided by GRNSW to RSPCA NSW. Having sought advice on that draft, RSPCA NSW formed the view that it would be appropriate to wait for the Commission’s Report before finalising it.<sup>1083</sup>

## The need for a MOU

- 9.321 The Commission recommends that the regulator should be required to enter into MOUs with RSPCA NSW and also with the AWL which properly reflect the roles and responsibilities of each organisation. The obligation to have such an arrangement should be enshrined in the legislation governing the regulator. Performance should be monitored and audited each year at the cost of

<sup>1079</sup> There was no new Code of Practice in 2010. It may have been a reference to the 2006 GRNSW Animal Welfare Policy which was published by the former regulator: the Greyhound and Harness Racing Regulatory Authority.

<sup>1080</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [385].

<sup>1081</sup> *Ibid*, [386].

<sup>1082</sup> *Ibid*, [388].

<sup>1083</sup> David OShannessy, 18 February 2016: T891.4-6.

the regulator. If there are performance failings then they will need to be addressed in the following year. That audit should also include an assessment of the costs incurred by RSPCA NSW and the AWL in performance of the MOUs. The costs so assessed should be paid annually by the regulator.<sup>1084</sup>

9.322 The MOUs should contain at least the following:

- A requirement that the regulator immediately report all welfare complaints made to it to either RSPCA NSW or the AWL. As the AWL has far fewer resources than RSPCA NSW, it should have the option of referring the complaint to RSPCA NSW if it considers that it does not have the capacity to deal with it. There should also be a requirement that the regulator immediately provide all information in its possession about the persons against whom the complaint has been made, including the identity and location of any affected greyhound.
- A requirement that, in circumstances where the regulator uncovers conduct which might reasonably be regarded as amounting to an offence under the POCTAA, whether as a result of kennel inspections or otherwise, it must immediately refer the matter to RSPCA NSW for assessment unless the circumstances are such that urgent action on the part of the regulator is necessary for the protection of any greyhound or the preservation of any investigation which might subsequently be undertaken by RSPCA NSW or the AWL.
- RSPCA NSW and the AWL should be required to carry out a preliminary assessment of the complaint to determine whether it should be investigated and, if so, whether by RSPCA NSW, the AWL, the NSW Police Force or the regulator. The regulator must be notified of how RSPCA NSW or the AWL intends to proceed.
- A requirement that the regulator provide all further information requested of it by RSPCA NSW or the AWL in connection with the complaint. The Rules should be amended to make it clear that industry participants are obliged to provide accurate personal and other information to the regulator and that they consent to such information being disclosed to law enforcement authorities involved in the prosecution of welfare offences. Industry participants voluntarily consent to be bound by the Rules. If they do not consent to their personal details being provided to those responsible for investigating and prosecuting welfare offences, in light of what the Commission has exposed during the course of its inquiry, there should be no place for them in the industry. The Rules should make it clear that, by consenting to be bound by the Rules, industry participants are consenting to disclosure. The Rules should also make clear that participants consent to any law enforcement authority providing personal or other information to the regulator following any investigation.<sup>1085</sup>
- A requirement that the regulator provide any additional resources which RSPCA NSW or the AWL might reasonably request to investigate any complaint concerning a registered greyhound or participant, including complaints in respect of greyhounds and persons who should have been registered.
- A requirement that RSPCA NSW and the AWL inform the regulator of the results of their investigations whether or not they have been carried out following a referral or, alternatively, on the initiative of RSPCA NSW or the AWL. That should include the results of investigations where RSPCA NSW or the AWL determines that no further action is required.

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<sup>1084</sup> The question of who should pay for the cost of executing the Memorandum of Understanding is addressed below.

<sup>1085</sup> RSPCA expressed concern to the Commission that on occasion it felt constrained by privacy legislation in determining what information could be supplied to GRNSW.

It may be that, although a criminal prosecution cannot proceed, the regulator wishes to proceed with disciplinary action.

- A requirement that the regulator establishes and maintains an electronic system for the recording and management of intelligence gathered by stewards, compliance officers who are responsible for inspections, and that RSPCA NSW and the AWL have access to that system and the ability to add to it.
- A requirement that RSPCA NSW and the AWL provide such instruction, education and guidance to industry participants in relation to compliance with the POCTAA and any other relevant welfare standards whether arising from codes of practice or otherwise, as RSPCA and the AWL require from time to time. If Government accepts the Commission's recommendation that a Greyhound Racing Integrity Commission be established, then it should be for the Animal Welfare Committee to determine what is required rather than RSPCA NSW or the AWL.
- A requirement that the regulator must consult and seek formal input from RSPCA NSW, RSPCA Australia and the AWL in relation to any policy, education package, or new rule of racing which affects the welfare of greyhounds. If a new regulator and Animal Welfare Committee are established, then the Committee should have the final say on content.

9.323 It will be necessary for the parties to work through the mechanisms for documenting the receipt and management of complaints and the sharing of intelligence and information to ensure, as far as possible, that the process is seamless and that all parties are accountable. It is important that any MOU be a living document which is capable of being amended if circumstances require. It should be reviewed by Government every five years in consultation with RSPCA NSW, the AWL and the regulator.

### **Should RSPCA and the AWL bear the cost?**

9.324 There will be costs incurred by RSPCA NSW and the AWL in performing the requirements of the MOU. In particular, the provision of instruction, education and guidance to industry participants in relation to compliance with the POCTAA and other relevant welfare standards will impose a burden upon the resources of RSPCA NSW and the AWL

9.325 It seems to have been assumed by GRNSW that RSPCA NSW and the AWL will pick up the cost of dealing with the industry's welfare failures.

9.326 Both organisations are charitable organisations. They are highly dependent upon the work of volunteers. They rely upon the generosity and commitment of many members of our community for funding. Greyhound racing is pursued in the hope or expectation of financial gain for its participants. It is hard to imagine that most donors who contribute funding, and volunteers who commit to many hours' of unpaid work, would approve of the industry's expectation that these charitable organisations will simply cover the cost of the industry's welfare failures. They might, with some justification, consider that the industry's expectation is not merely unfair. It is ethically and morally wrong.

9.327 Both organisations have limited resources. RSPCA NSW has 32 Inspectors in this State. Seventeen are in the Sydney metropolitan area and 15 located in regional areas. Its inspectors investigate more than 12,000 complaints every year.<sup>1086</sup> It receives a recurrent grant from the Government in the sum of \$424,000.<sup>1087</sup> That is less than 2% of its regular funding. It receives no

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<sup>1086</sup> RSPCA NSW website, "Inspectorate": <<https://www.rspcansw.org.au/our-work/inspectorate>> (accessed 24 May 2016).

<sup>1087</sup> RSPCA NSW, Response to Order 1 dated 25 May 2015.

funds from the Federal Government. RSPCA NSW requires, on average, \$34 million to operate each year. It has ten shelters (four with veterinary hospitals). There are also 28 volunteer branches which RSPCA NSW has described as “the backbone of RSPCA’s work in regional NSW”. It also claims, and the Commission accepts, that it is through its fundraising efforts and the generosity of the community that it is able to continue to operate.<sup>1088</sup>

- 9.328 The AWL has been caring for surrendered, neglected and abandoned animals for over 50 years. It receives no funding from Government and relies on public donations.<sup>1089</sup> Based in Kemps Creek in Western Sydney, the AWL has 13 volunteer branches at various locations within the State, a foster care network, a veterinary hospital and a behaviour team.<sup>1090</sup> It has two full-time inspectors who investigated 563 reports of animal cruelty in the 2014-2015 financial year. They travelled some 74,000 kilometres investigating those reports.<sup>1091</sup> The AWL operates three animal welfare shelters. In the 2014-2015 financial year, it had a total income of \$7,610,696 and total expenses of \$5,745,481.<sup>1092</sup>
- 9.329 By any measure, RSPCA and the AWL carry out an important welfare service in respect of all animals in this State. That should not be compromised by the greyhound industry’s failure to maintain proper welfare standards and safeguard the welfare needs of greyhounds throughout their lifecycle.
- 9.330 As noted in Chapter 8, the Joint Select Committee into Companion Animal Breeding Practices in NSW (“the Joint Select Committee”) recommended that Government review the adequacy of funding for RSPCA NSW and the AWL.<sup>1093</sup> This recommendation was supported by Government.<sup>1094</sup> The Joint Select Committee recognised that the resources of RSPCA NSW and the AWL were stretched and that, in addition, the cost of regulating and enforcing animal welfare was likely to keep rising, not least because of increasing community expectations for more proactive intervention. The Joint Select Committee also noted that its recommendations would impact on the cost of regulation and enforcement.<sup>1095</sup>
- 9.331 This Commission recognises that its recommendations in relation to the MOU will further increase the financial burden on RSPCA NSW and the AWL.
- 9.332 The Commission considers that the regulator must bear the costs of RSPCA NSW and AWL in their performance of the MOUs. At the moment, there are insufficient incentives for industry participants to maintain proper welfare standards. The industry is driven by the prospect of financial gain. The prospect of a financial burden if welfare standards are not met may lead to improvements in the standard of care provided to the industry’s greyhounds. As has been referred to above, those costs should be assessed and paid annually.

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<sup>1088</sup> RSPCA NSW website, “About RSPCA NSW”: <<https://www.rspcansw.org.au/about/about-rspca-nsw>> (accessed 24 May 2016).

<sup>1089</sup> Animal Welfare League website, “Who We Are”: <<http://www.awlnsw.com.au/who-we-are.html>> (accessed 24 May 2016).

<sup>1090</sup> Animal Welfare League website, “What We Do”: <<http://www.awlnsw.com.au/what-we-do.html>> (accessed 24 May 2016).

<sup>1091</sup> Animal Welfare League Annual Report 2015, p. 4.

<sup>1092</sup> Animal Welfare League website, “Abridged Financial Statements”:

<<http://www.awlnsw.com.au/assets/Latest%20news/Financial%20Statements%202015%20-%20Animal%20Welfare%20League%20NSW.pdf>> (accessed 24 May 2016).

<sup>1093</sup> Parliament of NSW, “Joint Select Committee on Companion Animal Breeding Practices in NSW”, Report 1/56 (August 2015), Recommendation 30, p. 93.

<sup>1094</sup> NSW Government, “Government Response to the ‘Select Committee on Greyhound Racing in NSW First Report’” (September 2014), p. 8.

<sup>1095</sup> Parliament of NSW, “Joint Select Committee on Companion Animal Breeding Practices in NSW”, Report 1/56 (August 2015), [7.46].

## Recommendations

19. The Greyhound Racing NSW Rules of Racing should specifically provide a range of penalties for welfare offences, as is now the case in relation to live baiting. The range of penalties should include suspension and disqualification for serious breaches and continuing or repeated breaches. If a statutory code of practice is introduced, the Rules of Racing must provide that a breach of that code is a breach of the Rules.
20. The Greyhound Racing NSW Rules of Racing should be amended to prohibit the use of barking muzzles on any occasion.
21. The current R 106 Form should be kept in a form where essential information for lifecycle tracking can be extracted and entered into a readily accessible database. The regulator should have the current R 106 Form independently assessed for shortcomings. The R 106 Form should be such that transfers of greyhounds to third parties can be verified.
22. Rule 106 of the Greyhound Racing NSW Rules of Racing should be amended to:
  - (a) Create an offence of providing false or misleading statements in relation to a notification of transfer or retirement.
  - (b) Require participants to supply further information as required by the regulator. A failure to do so should result in suspension until such information is provided.
23. Greyhound Racing NSW or any new regulator should put in place an audit plan whereby a statistically significant sample of R 106 Forms are verified each year. The results of the audit should be reported in its annual report.
24. The Greyhound Racing NSW Rules of Racing should be independently reviewed, particularly in relation to race day welfare obligations to ensure that what they contain is adequate.
25. The power to compel the attendance of unlicensed persons and the production of documents should be exercised by the Supreme Court of NSW upon an application by the regulator or its delegates.
26. The Greyhound Racing NSW Rules of Racing should be amended to make it clear that Greyhound Racing NSW or any new regulator has power to supply personal information to other authorities and will do so if requested.
27. Greyhound Racing NSW or any new regulator should not be given statutory powers of entry, search and seizure including the power to obtain and execute search warrants.
28. Greyhound Racing NSW or any new regulator should not be given a power to undertake covert, filmed surveillance activities.
29. Government should consider extending the offences in respect of which warrants can be obtained under the *Surveillance Devices Act 2007* (NSW) to the live baiting offences and the offence of aggravated animal cruelty contained in the *Prevention of Cruelty to Animals Act 1979* (NSW).
30. Greyhound Racing NSW or any new regulator should not be given the power to issue remedial directions that are enforceable in Court.
31. Greyhound Racing NSW or any new regulator should not be given the power to enter into undertakings with greyhound racing clubs that are enforceable in Court.

32. Greyhound Racing NSW or any new regulator should not be given a power to issue penalty infringement notices.
33. An enforceable Code of Practice containing minimum standards of care for greyhounds throughout their lifecycle should be established. The recommended amendments to the *Prevention of Cruelty to Animals Regulation 2012* (NSW) as detailed in this Chapter.
34. The enforceable Code of Practice should require Greyhound Racing NSW or any new regulator as well as industry participants to maintain complete lifecycle records. The record should travel with the greyhound throughout its lifecycle.
35. Greyhound Racing NSW or any new regulator should be required to use all reasonable endeavours to enter into Memoranda of Understanding with RSPCA NSW and with the Animal Welfare League which properly reflect the roles and responsibilities of each organisation. This obligation should be enshrined in the legislation governing the regulator and performance should be monitored and audited each year at the cost of the regulator.
36. Greyhound Racing NSW or any new regulator should bear the costs of RSPCA NSW and the Animal Welfare League in their performance of obligations under the Memoranda of Understanding.



# 10 Animal welfare: statutory requirements and strategic planning

## The requirement to produce strategic plans

- 10.1 Greyhound Racing New South Wales' ("GRNSW") commitment to the welfare of the industry's greyhounds should have been part of its strategic plans. That may have provided greyhounds some measure of protection, provided the strategic plans were implemented.
- 10.2 Pursuant to s. 12(1) of the *Greyhound Racing Act 2009 (NSW)* ("the Act") GRNSW is required to prepare strategic plans for its activities from time to time. More particularly, it was required to develop a strategic plan for the NSW greyhound racing industry within 12 months after commencement of s. 12 of the Act and further strategic plans at least once every three years thereafter.<sup>1096</sup>
- 10.3 Pursuant to s. 12(3) of the Act, each strategic plan is required to be prepared in consultation with the Greyhound Racing Industry Consultation Group ("GRICG") and other greyhound racing industry stakeholders. GRNSW is also required to consult 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.<sup>1097</sup>
- 10.4 GRNSW's annual reports are required to include a progress report on the implementation of its strategic plan and the strategic plan for the greyhound racing industry over the period to which the annual report relates.<sup>1098</sup>
- 10.5 Between 2009 (when s. 12 of the Act commenced) and 2015 GRNSW developed only one strategic plan for the industry. It was adopted on or around 27 July 2010. It seems to have been intended that this strategic plan, or significant parts of it, would operate until 2020. It was known as "Chasing 2020".<sup>1099</sup> This strategic plan had a limited focus on animal welfare and, to the extent that it was addressed, it was largely aspirational. Like many of GRNSW's strategies (then and now), it lacked detail of how it would be implemented by GRNSW and any performance indicators which could measure its effectiveness over time. Chasing 2020 was supported by an operational plan which GRNSW claimed was "monitored" on a quarterly basis.<sup>1100</sup> Chasing 2020 contained the following in relation to animal welfare:

### **Sustainability**

To ensure NSW Greyhound Racing is alive and well in 2020 and beyond.

### **Aspirations**

- Improved welfare of greyhounds across the entire lifecycle
- To continue investment in TAB racing venues

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<sup>1096</sup> The Act s. 12(3).

<sup>1097</sup> The Act s. 12(2). Note: the expression "other greyhound industry stakeholders" is not defined.

<sup>1098</sup> The Act s. 12(4).

<sup>1099</sup> Chasing 2020: Ex FFF (17-18 February 2016). It should be noted that, in January 2010, GRNSW commenced what it described as "Project Welfare", aspects of which are addressed in this Report. By and large it was a failure.

<sup>1100</sup> GRNSW Annual Report 2012, inside front cover.

- Deliver customer service at best practice levels that exceed industry expectations
- Provide industry leading education and accreditation opportunities to participants

#### Strategies

- Drive welfare improvement and cultural change to ensure racing in NSW meets community expectations through:
  - Improved licensing and regulation of breeders, trainers and rearing establishments
  - Improved track preparation
  - Race programming that maximises the racing life of greyhounds
  - Increased rehoming of greyhounds
  - Introduction of race day and club welfare policies
  - Improve lifecycle tracking
  - Encouraging responsible breeding practices
- Continued promotion of Greyhounds as Pets and the greyhound breed in general

Project Welfare is a GRNSW initiative aimed at improving the welfare of greyhounds in NSW across all phases of the lifecycle. Through consultation and education of members, GRNSW will develop the above policies and practices to achieve best practice standards in relation to all aspects of greyhound welfare.<sup>1101</sup>

10.6 The document continued with an outline of strategies for the redevelopment of TAB tracks and facilities, delivery of customer services and education and training.<sup>1102</sup> So far as greyhound welfare was concerned, education and training were to be limited to:

... introductory courses and information seminars for trainers, attendants, owners, breeders and club officials in a range of areas including: racing rules; regulatory requirements; animal welfare; breeding practices; animal first aid; basic training methods; and, animal handling.<sup>1103</sup>

10.7 A Power Point presentation heralded the commencement of Chasing 2020. GRNSW also published a “Strategic Snapshot Table” to accompany the Chasing 2020 slides.<sup>1104</sup> This set out the timeline for delivery of the aspirations/strategies; what was to be delivered in the short term and what would be the subject of “ongoing implementation and consideration”. The timeline was divided into “Year 1”, “Year 2”, “Year 3” and “Year 3 +” (presumably any time between 2013 and 2020). It is a very telling document in terms of GRNSW’s commitment to animal welfare.

10.8 Table 9.2 is an extract from GRNSW’s Strategic Snapshot Table; red lines beside an ‘aspiration/strategy’ indicate where a specific year for implementation was fixed and blue lines indicate where the aspiration/strategy was to have ongoing implementation and delivery.

<sup>1101</sup> Ex FFF (17-18 February 2016), p. 12.

<sup>1102</sup> Ibid, p. 12. The document suggests that there would be little education or training in relation to animal welfare. It would be limited to the development and delivery of “introductory courses and information seminars”. They would include “...regulatory requirements; animal welfare”.

<sup>1103</sup> Ibid, p. 12.

<sup>1104</sup> GRNSW website, “Strategic Snapshot Table”: <[http://www.thedogs.com.au/Uploads/Userfiles/100727-StrategicSnapshotTable\(2\).pdf](http://www.thedogs.com.au/Uploads/Userfiles/100727-StrategicSnapshotTable(2).pdf)> (accessed 13 May 2016).

**Table 9.2 GRNSW timeline for delivery of strategies: “Sustainability”**

Pillar	Strategy	Year 1	Year 2	Year 3	Year 3+
Sustainability	Drive welfare improvement and cultural change to ensure greyhound racing in NSW meets community expectations through:				
	<ul style="list-style-type: none"> <li>Improved licensing and regulation of breeders, trainers and rearing establishments</li> </ul>				
	<ul style="list-style-type: none"> <li>Improved track preparation</li> </ul>				
	<ul style="list-style-type: none"> <li>Race programming that maximises the racing life of greyhounds</li> </ul>				
	<ul style="list-style-type: none"> <li>Increased re-homing of greyhounds</li> </ul>				
	<ul style="list-style-type: none"> <li>Introduction of race day and club welfare policies</li> </ul>				
	<ul style="list-style-type: none"> <li>Improved lifecycle tracking</li> </ul>				
	<ul style="list-style-type: none"> <li>Encouraging responsible breeding practices</li> </ul>				
	<ul style="list-style-type: none"> <li>Continued promotion of Greyhound as Pets and the greyhound breed in general</li> </ul>				

Source: GRNSW website, “Strategic Snapshot Table”.

- 10.9 The most important welfare initiatives would not be delivered by 2013. They would be delivered sometime between 2013 and 2020. The establishment of the Commission prompted a renewed focus. However, even today there are important aspects of the Chasing 2020 aspirations and strategies which have not been achieved.

### GRNSW annual reports

- 10.10 The manner in which GRNSW reported progress on Chasing 2020 in its annual reports is relevant too. As noted above, GRNSW was required to include a progress report on the implementation of its strategic plan in each annual report. No mention was made of the Chasing 2020 strategic plan in the GRNSW Annual Report 2011.
- 10.11 The GRNSW Annual Report 2012 did refer to that part of Chasing 2020 which published the aspiration/strategy concerning improved licencing.<sup>1105</sup> It recorded what it described as the “Outcome” as follows:
- GRNSW continued work on three new Codes of Practice for the areas of breeding, rearing and greyhound pre-training – to be released in 2013.<sup>1106</sup>
- 10.12 This outcome appears to have been drawn from the Project Welfare Implementation Plan (“Project Welfare Plan”), which described codes of practice as the “next step” for licencing and regulation.<sup>1107</sup>
- 10.13 Codes of practice have nothing to do with improved licencing of breeders, trainers and rearing establishments although they may be relevant to the welfare of greyhounds if proper standards are set and industry participants adhere to them.
- 10.14 In its 2013 Annual Report, GRNSW provided a further progress report on Chasing 2020.<sup>1108</sup> No mention was made of improved licencing and regulation of breeders, trainers and rearing establishments. In his report, the then Chief Executive, Mr Brent Hogan, stated that GRNSW had embarked on a number of initiatives during the year, including the ongoing development of policies to ensure the accountability of greyhound welfare across the entire lifecycle, including a

<sup>1105</sup> Licencing of breeders, trainers and rearing establishments was reduced to “Licencing of breeders and rearing establishments”.

<sup>1106</sup> GRNSW Annual Report 2012, p. 23.

<sup>1107</sup> Project Welfare Implementation Plan: Ex F (28 September – 2 October 2015), p. 6.

<sup>1108</sup> GRNSW Annual Report 2013, p. 20.

code of practice for breeding and rearing which was “soon to be released”.<sup>1109</sup> It was not released.

10.15 It was not until 1 July 2015 that GRNSW introduced a Code of Practice for Breeding, Rearing and Education (“the GRNSW Breeding Code”). The Code of Practice for the Keeping of Greyhounds in Training (“the GRNSW Training Code”) had been created in April 2011 and released on 1 July 2011.<sup>1110</sup>

10.16 In the GRNSW Annual Report 2013, Mr Hogan, also referred to the newly established Education Unit, which would be tasked with training new industry applicants as well as:

... up-skilling and monitoring existing participants’ adherence to welfare standards by undertaking regular inspections of racing kennels as well as rearing, breeding and greyhound education facilities.<sup>1111</sup>

There was no up-skilling and little monitoring thereafter. GRNSW’s inspection regime was inadequate.

10.17 In the GRNSW Annual Report 2014, GRNSW did not mention Chasing 2020 at all. There was no progress report.

10.18 From July 2013, and contrary to the Act, GRNSW operated without any Strategic Plan for the greyhound racing industry. At the latest, a further Strategic Plan needed to be in place by 27 July 2013.

10.19 In the GRNSW Annual Report 2014 a new Joint Animal Welfare Strategy (“JAWS”) with Greyhound Racing Victoria (“GRV”) was announced.<sup>1112</sup> It later became known as the Greyhounds Australasia Greyhound Welfare Strategy (“the NGWS”). GRNSW claimed that, in FY14 it had “... made large strides in its push for continued improvement and cultural change in the area of animal welfare”.<sup>1113</sup> The joint ‘strategy’, which was to be staged over a further period of years, was described as the most important “stride” which had taken place during that year.<sup>1114</sup> New “standards of animal welfare excellence”<sup>1115</sup> were to be established. The only mention of licences was a representation that there would be a tiered system of trainer licence types which would stipulate how many greyhounds a trainer could train. That has not occurred.

10.20 By the close of the reporting year for FY15, live baiting had been exposed and the Commission had commenced its work. The GRNSW Annual Report 2015 is nevertheless important. Although it did not report on Chasing 2020, it did not report on any other strategic plan either. That is because, contrary to s. 12(3) of the Act, GRNSW had not prepared a further strategic plan three years after Chasing 2020 had been prepared in July 2010.

## Chasing 2020: aspirations versus achievements

### *Improved licencing and regulation of breeders, trainers and rearing establishments*

10.21 Some unidentified improvements in the licencing and regulation of breeders, trainers and rearing establishments were to be delivered in Year 2 (2010). So called “ongoing implementation and consideration” was to occur thereafter in Years 2, 3 and 3+.

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<sup>1109</sup> GRNSW Annual Report 2013, p.14.

<sup>1110</sup> GRNSW Annual Report 2011, p. 21.

<sup>1111</sup> GRNSW Annual Report 2014, p. 14.

<sup>1112</sup> Ibid, p. 7.

<sup>1113</sup> Ibid, p. 10.

<sup>1114</sup> Ibid.

<sup>1115</sup> Ibid.

- 10.22 In January 2010, GRNSW commenced what it described as “Project Welfare”. In its Project Welfare Consultation Findings (“Project Welfare Findings”), GRNSW claimed that Project Welfare was to be “... the first step in the implementation of a long term welfare policy aimed at driving welfare improvement and cultural change in the industry.”<sup>1116</sup>
- 10.23 However, there was no improvement to the licencing of trainers. There were no breeders’ licences until 1 July 2015. Rearing and education establishments remain unlicensed. Currently, rearers and educators must be licenced as breeders.<sup>1117</sup> GRNSW claimed that there would be a national licencing roll-out in July 2016 which would require rearers and educators to be licenced as such. In anticipation of the roll-out of new licence categories, the Commission understands that some rearers and educators have already registered an intention to be licensed under the new categories. They are to be issued with transitional licences from 1 July 2016 which will be valid for a period of two years. They can then be converted into a full licence.<sup>1118</sup> This very much suggests that GRNSW does not expect a national system to be in place for some time if at all. It is still “developing” the requirements for licence holders.<sup>1119</sup>
- 10.24 Education/breaking-in establishments were known to have been using the “[t]raditional training methods” of live baiting. This included the “[i]llegal keeping of European rabbits” and the “[i]llegal use of live animals e.g. cats, possums, chickens etc.”<sup>1120</sup> This was acknowledged by GRNSW at the RSPCA Inspectors’ Conference in September 2009.<sup>1121</sup> Educators and education facilities were still involved in the practice when the *Four Corners program* was broadcast in February 2015.

#### **Improved track preparation**

- 10.25 Improved track preparation was to be delivered by the end of Year 2. The Project Welfare Findings noted that, in 2008, GRNSW commenced the development of a policy aimed at improving track preparation.<sup>1122</sup>
- 10.26 Track preparation, maintenance and design are addressed in Chapter 15. That Chapter concerns injuries which greyhounds may sustain while racing or trialling. Research suggests that track surface, maintenance and design all play a part in greyhound injuries, their severity and frequency.
- 10.27 Industry participants had noted a number of welfare issues, which included inconsistent racing surfaces from week to week, tracks potentially being too hard causing injuries, lack of consistency in track preparation methods and lack of training for club staff maintaining tracks.<sup>1123</sup> It was proposed that there be a management review in consultation with clubs of the 2008 “Improving Track Preparation Guidelines” and that management recommend a “Preparation Policy” to the Board for approval.<sup>1124</sup>
- 10.28 As far as the Commission is aware, this did not occur. As the Project Welfare Findings also noted, “finalisation of the policy was side tracked by the 2009 merger”.<sup>1125</sup>

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<sup>1116</sup> Project Welfare Consultation Findings: Ex E (28 September – 2 October 2015), p. 1.

<sup>1117</sup> LR 125.

<sup>1118</sup> GRNSW Response to Order 27 dated 19 February 2016.

<sup>1119</sup> Ibid.

<sup>1120</sup> Project Welfare Slides: Ex D (28 September – 2 October 2015).

<sup>1121</sup> Ibid.

<sup>1122</sup> Ex E (28 September – 2 October 2015), p. 2.

<sup>1123</sup> Ibid.

<sup>1124</sup> Ibid, p. 3.

<sup>1125</sup> Ibid, p. 2.

- 10.29 The GRNSW Annual Report 2011 noted that Chasing 2020 required GRNSW to develop and implement standards and guidelines for consistent track preparation for trials and racing across the TAB sector to ensure consistency in tracks for the benefit of punters and improved animal welfare. It noted that consultation sessions with all TAB track managers and staff were completed and that surface samples had been collected to identify inconsistencies in sand quality and type. Standards and guidelines were to be delivered in 2011.
- 10.30 The GRNSW Annual Report 2012 also noted that the Chasing 2020 strategic plan required GRNSW to develop and implement standards and guidelines for consistent track preparation for trials and racing across the TAB sector to ensure consistency in tracks for the benefit of punters and improved animal welfare. There was no further mention of the sand samples. The standards and guidelines referred to in the GRNSW Annual Report 2011 had not been developed. GRNSW referred again to those standards and guidelines. It claimed that the training guidelines were complete with a “rollout” scheduled for the second half of 2012, “... with a focus on WHS compliance”.<sup>1126</sup> Nothing was said of the standards. Mr Hogan told the Commission that he was not sure that this project was ever completed.<sup>1127</sup> It was not completed.
- 10.31 No further mention was made of improved track preparation, standards or guidelines in the GRNSW Annual Report 2013. Nothing was said concerning track preparation at all.
- 10.32 In March 2014, the NSW Legislative Council’s 2014 Select Committee on Greyhound Racing in NSW (“the Select Committee”) recommended that GRNSW develop and implement industry standards for best practice for race track design.<sup>1128</sup>
- 10.33 However, again in the GRNSW Annual Report 2014, there was no reference to track preparation, standards or guidelines as a welfare issue or of best practice for track design
- 10.34 Mr Anthony O’Mara, GRNSW’s former General Manager of Education and Welfare, informed the Commission that “improved track preparation” was limited to the appointment of a regional tracks manager in 2014.<sup>1129</sup>
- 10.35 On 27 November 2015, GRNSW called for “research proposals” to “explore” the issues of track design and surface, “investigate factors influencing greyhound race track safety”, and “develop best-practice recommendations”.<sup>1130</sup> This research project is addressed in Chapter 15.

***Race programing that maximises the racing life of greyhounds***

- 10.36 A racing program designed to maximise the racing life of a greyhound was to have been delivered in Year 1. The Project Welfare Plan and the Project Welfare Findings also identified it as an issue. An “options paper” was to be developed.<sup>1131</sup>
- 10.37 It was not until April 2014 that “Masters Racing” information sessions were held to give participants the opportunity for input into an initiative that would see races programmed for greyhounds that had reached the age of 42 months, so as to extend their racing careers. By the age of 42 months, the racing careers of most greyhounds are over. Masters Racing was introduced for the first time in September 2014.<sup>1132</sup> In July 2015 changes were made to the

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<sup>1126</sup> GRNSW Annual Report 2012, p. 22.

<sup>1127</sup> 17 February 2016: T765.39.

<sup>1128</sup> Select Committee, report “Greyhound Racing in New South Wales – First Report” (March 2014), Recommendation 16, p. 109.

<sup>1129</sup> Transcript of evidence of Anthony O’Mara, 3 February 2016: Ex WW (17-18 February 2016), p. 30.

<sup>1130</sup> GRNSW, “Request for Research Proposals – Statement of Research Requirements”: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=7129>> (accessed 14 May 2016).

<sup>1131</sup> Ex E (28 September – 2 October 2015), p. 4.

<sup>1132</sup> GRNSW Response to Order 1 dated 1 May 2015.

Masters Grading Policy to lift the age of entry for older greyhounds to race to 45 months.<sup>1133</sup> Masters Racing is addressed in Chapter 14. The program raises significant welfare issues in relation to the increased risk of serious injuries in older greyhounds.

- 10.38 In the GRNSW Annual Report 2011, no mention was made of the Chasing 2020 aspiration/strategy to introduce race programming that maximised the racing life of greyhounds. The only reference to race programming concerned maximising wagering revenue. No mention was made of it in the GRNSW Annual Reports for 2012 or 2013 either. By the time of publication of the GRNSW Annual Report 2014, there had been a Masters Racing information session in April 2011, although no Masters Racing had yet taken place.

#### *Increased rehoming of greyhounds*

- 10.39 Understandably, no year for delivery of increased rehoming was specified. It was a matter where there would be “ongoing implementation and consideration” and always room for improvement. Increasing the number of greyhounds rehomed was addressed in each annual report.<sup>1134</sup>

#### *Introduction of race day and club welfare policies*

- 10.40 These policies were to be delivered in Year 1.
- 10.41 The Project Welfare Findings referred to race day and club welfare policies, noting that GRNSW was to work with clubs and race day officials to ensure that all persons involved in greyhound racing had an understanding of, and the reasons behind, the need for greyhound welfare policies and practices.<sup>1135</sup> The ‘next step’ was to review all race day and club welfare policies and the GRNSW Greyhound Racing Rules (“the Rules”) and report findings with recommendations to the Board.<sup>1136</sup> As far as the Commission is aware this did not occur. Mr O’Mara informed the Commission that in fact club welfare policies were “very limited”. They were limited to a check list of equipment, such as stretchers and rooms for veterinary practitioners.<sup>1137</sup>
- 10.42 The GRNSW Annual Report 2011 reported on the progress of Chasing 2020 in relation to the introduction of race day and club welfare policies. The “Outcome” was recorded as follows:
- Introduction of vets on course at all Non-TAB meetings and the establishment of a Greyhound Welfare and Veterinary Services Unit within GRNSW.<sup>1138</sup>
- 10.43 The mandatory presence of veterinarians at non-TAB tracks was a race day welfare policy.<sup>1139</sup> However, it was hardly a club welfare policy. The establishment of the Greyhound Welfare and Veterinary Services Unit was neither a race day nor a club welfare policy. It was a controversial decision taken by GRNSW to move veterinary services in-house and to abandon the Veterinary Advisory Panel which had comprised independent veterinary practitioners who provided advice and services to GRNSW.
- 10.44 No further mention was made of race day or club welfare policies in subsequent annual reports.

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<sup>1133</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [44]. And prize money was adjusted to align with fifth grade prize money level at the particular race meeting, *Ibid* at [526].

<sup>1134</sup> Rehoming and GRNSW’s rehoming policy is addressed in Chapter 18.

<sup>1135</sup> Ex E (28 September – 2 October 2015), pp. 7-8.

<sup>1136</sup> *Ibid*, p. 8.

<sup>1137</sup> Ex WW (17 – 18 February 2016), p. 30.

<sup>1138</sup> GRNSW Annual Report 2011, p. 21.

<sup>1139</sup> The question of whether there should be a veterinarian in attendance during trials prior to and after race meetings at non-TAB tracks is addressed in Chapter 8, as is the broader question of whether it should be lawful to conduct any trials without a veterinarian in attendance.

### *Improved lifecycle tracking*

- 10.45 There was no delivery date for the aspiration/strategy for improving lifecycle tracking of greyhounds. On any view there should have been. However, the fact that GRNSW did not determine a delivery date is unsurprising.
- 10.46 When it comes to the welfare of greyhounds, the culture of the industry has been anything but transparent. For years the wider community both in Australia and Great Britain has been concerned that proper records were not being kept by regulators in relation to each greyhound so that they could be tracked throughout their lifecycle or, alternatively, that records were being kept but away from public scrutiny. It has been regarded by many as one of the more significant welfare failures of the industry. Concerns of this nature were considered by Lord Donoughue of Ashton in 2007 in the “Independent Review of the Greyhound Industry in Great Britain” (“the Donoughue Report”). He recommended that records should be kept for each greyhound “from cradle to grave” and that they should be publicly accessible.<sup>1140</sup> The Commission agrees.
- 10.47 The Project Welfare Findings noted that a new rule, R 105, had been introduced in March 2010 which is in similar terms to the current R 106(3). The ‘next step’ was said to be the development of IT systems to support monitoring and compliance as part of a proposed IT upgrade.<sup>1141</sup> This did not occur.
- 10.48 GRNSW acknowledged to the Commission that it had failed in relation to the keeping of full and accurate records to track the lifecycle of each greyhound. It claimed that there were “issues” with tracking the number of litters born, the number of pups named, injury statistics and information concerning greyhounds after their racing careers were over. However, it sought to persuade the Commission that this was because it had inherited a “legacy” IT system from its predecessor with various deficiencies.<sup>1142</sup> That might provide part of the explanation but it is far from the full story.
- 10.49 The Commission is satisfied that GRNSW did not consider that it was in its interest to keep accurate records of – let alone expose – important matters affecting the welfare of greyhounds. The keeping of those records or their exposure to public scrutiny might focus attention on the serious welfare failings of the industry and just how far below community expectations the industry was operating. Three significant examples of GRNSW’s approach were the failure (until 2015) to insist that industry participants comply with R 106(3), the deliberate under reporting of injuries and the non-reporting of euthanasia or deaths on-track, and the persistent failure to keep records of wastage despite years of complaints from welfare organisations and others. There is still inadequate lifecycle tracking and it is still inaccessible to the public.
- 10.50 Turning again to GRNSW’s statutory obligation to report the progress of Chasing 2020 in its annual reports, improved lifecycle tracking did not rate a mention in the GRNSW Annual Reports of 2011, 2012, 2013 and 2014. Not one word.
- 10.51 It has already been noted that as part of the new JAWS with GRV, which was launched in February 2014 and became the NGWS in May 2014,<sup>1143</sup> GRNSW announced a series of new welfare ‘initiatives’. A number were referred to in the GRNSW Annual Report 2014. Although improved lifecycle tracking was not one which was mentioned, GRNSW informed the Commission that it was to be developed as part of the strategy; one of a number of “mini-

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<sup>1140</sup> Lord Donoughue of Ashton, report “Independent Review of the Greyhound Industry in Great Britain” (November 2007), p. 107.

<sup>1141</sup> Ex E (28 September – 2 October 2015), p. 8.

<sup>1142</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>1143</sup> In May 2014, Greyhounds Australasia announced that the GRNSW/GRV joint strategy had been adopted by it and the member States as the National Greyhound Welfare Strategy.

projects.”<sup>1144</sup> More particularly, GRNSW informed the Commission that one of the Year 1 initiatives was:

Collation and monitoring of national data regarding greyhounds at each stage of the lifecycle – including retirement and euthanasia statistics so that the success of various strategies can be assessed.<sup>1145</sup>

- 10.52 Year 1 passed long ago. There is no national data which tracks the lifecycle of greyhounds at each stage of the lifecycle. There remains no complete lifecycle data in NSW either. The Commission is of the opinion that it will never be achieved unless there is a dramatic cultural shift and, in particular, industry participants accept that they are responsible for greyhounds under their care throughout the entire normal lifecycle of the breed or until they are rehomed.
- 10.53 In its August 2015 submission to the Commission, GRNSW accepted that at present it does not have sufficient information to collate and monitor data at each stage of the greyhound’s lifecycle, including retirement and euthanasia statistics, which would allow welfare strategies to be assessed and appropriately developed. It claimed that “preliminary efforts” were underway to increase reporting and the amount of information captured. GRNSW further claimed that its efforts had “... been hampered by inadequate resourcing and inconsistent approaches taken by controlling bodies to collect and analyse data”.<sup>1146</sup>
- 10.54 The Commission considers that this state of affairs is unacceptable. Accurate national lifecycle tracking would be desirable. However, what is critical to any continuation of the industry in this State is accurate, robust and accessible lifecycle data in NSW. The welfare of greyhounds in this State should not be dependent upon what controlling bodies in other jurisdictions might do.
- 10.55 The Commission is satisfied that, if the industry continues, there remains a substantial risk that lifecycle tracking will remain poor. That cannot be tolerated under any circumstances. It is no answer to point to a lack of resources. If the industry is to continue, the regulator will have to find them. That means that industry participants will need to pay. The industry (through the regulator) will need to pay for a system which should have been established years ago. Lack of resources cannot be an answer to an industry where a lack of transparency facilitated the concealment of so many significant welfare failings and for so many years. It is worrying that GRNSW continues to display resistance to full lifecycle tracking for *any* reason.
- 10.56 GRNSW informed the Commission that it was “scoping” the development of an online services system so that retirement forms can be processed online to improve ease of access and convenience for participants. It claims the system would facilitate voluntary compliance with notification requirements and provide an “avenue” for GRNSW to increase the type of information it collects. On the other hand, it asserts that the system would “require significant investment and substantial ongoing maintenance costs”. The system would permit the collection of full racing greyhound life cycle information.<sup>1147</sup>
- 10.57 A number of matters should be noted.
- 10.58 First, the Commission is not aware of the current level of compliance within NSW in relation to the lodgement of R 106 Forms or their contents. GRNSW informed the Commission that, in the past, compliance was poor. In June 2015, Greyhounds Australasia (“GA”) reported that the level of compliance in this State was 14.57%. It rose to 16.28% by August 2015. The national average

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<sup>1144</sup> GRNSW Response to Order 1 dated 1 May 2015.

<sup>1145</sup> Ibid.

<sup>1146</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [557].

<sup>1147</sup> Ibid, [561].

was approximately 40%. GRV had the highest compliance rate. It was 75%.<sup>1148</sup> GA informed the Commission that, as at 23 November 2015, compliance nationally was 44% and that this demonstrated improved compliance.<sup>1149</sup>

- 10.59 Second, the Commission accepts that development of an online portal is essential to ensure that the regulator's lifecycle data is accessible to others. However, the Commission is not convinced that an online portal will, of itself, necessarily facilitate voluntary compliance. There needs to be an acceptance within the industry not only that R 106 Forms must be lodged, but that they must contain complete and accurate information. The Commission noted a number of examples through the course of the inquiry where R 106 Forms were incomplete and inaccurate. It would seem that, at present, GRNSW has no system in place to check the adequacy or accuracy of the information provided.
- 10.60 Third, lifecycle data should not be limited to data concerning *racing* greyhounds. Thousands of young greyhounds simply disappear from the system before being named and well before there is any determination of whether they are suitable to race. Collecting data in respect of racing greyhounds only is inappropriate.
- 10.61 Fourth, it should never be assumed that the collection of more lifecycle information will, of itself, better protect the welfare of greyhounds in any immediate sense. It might expose failures to public scrutiny and lead to improvements in the longer term. Much depends upon the regulator using the information collected to assist in the shaping of welfare policy.
- 10.62 During the public hearings, the Commission heard evidence of a significant example of the inadequacy of GRNSW's reliance on R 106(3) to protect the welfare of greyhounds. It concerned the destruction of greyhounds by a Senior Ranger of Kempsey Shire Council. A review conducted by GRNSW in September 2015 showed that the Senior Ranger, rather than a qualified veterinary surgeon, was listed as the person responsible for putting down 46 greyhounds on R 106 Forms submitted to GRNSW between February 2015 and September 2015. GRNSW's records show that the last occasion occurred on 25 August 2015.<sup>1150</sup> The Senior Ranger admitted to the Commission that he had been responsible for euthanasing approximately 100 greyhounds in 2015. It would seem that a number of greyhounds that were destroyed by the Senior Ranger were not reported in any R 106 Form.<sup>1151</sup>
- 10.63 Throughout, GRNSW was aware that this Senior Ranger was putting down greyhounds and, on many occasions, for no reason other than they were 'unsuitable for racing'. Indeed, GRNSW insisted that he properly fill out the R 106 Forms from time to time. His conduct was a serious breach of the GRNSW Code of Practice for the Keeping of Greyhounds in Training ("the GRNSW Training Code") which required that only veterinary surgeons euthanase greyhounds. GRNSW knew that greyhounds were being put down in breach of the GRNSW Training Code but did nothing.
- 10.64 On around 17 October 2015, GRNSW became aware that the Commission was investigating the conduct of the Senior Ranger. On 25 October 2015, it announced a 'campaign' called the "R 106 Compliance Project", which was intended to obtain historical information from industry participants in respect of the thousands of greyhounds for whom a retirement status was unknown by GRNSW. A failure to comply by January 2016 would result in the imposition of a late

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<sup>1148</sup> GRNSW Response to Order 26 dated 19 January 2016.

<sup>1149</sup> Ibid.

<sup>1150</sup> GRNSW Response to Order 17 dated 23 October 2015.

<sup>1151</sup> Robert Watson, 17 November 2016: T511.26-31.

fee and greyhound owners and trainers would be precluded from nominating any greyhound if the information was not provided by 1 March 2016. Prize money would also be frozen.<sup>1152</sup>

- 10.65 The R 106 Compliance Project is addressed in Chapter 11. There were a number of significant problems with the manner in which GRNSW's data was reported to the Commission and its reliability. To the extent that this initiative may have been intended to pick up accurate information concerning the fate of the thousands of greyhounds which passed through the system since 2009, the data was far from complete.
- 10.66 Recently GRNSW informed the Commission that there is a "data review" which will be conducted by a contractor during June and July 2016 and that it has engaged a "Retirement Officer" to assist. GRNSW said that it "expects this process will accurately update the status of 118,887 greyhounds".<sup>1153</sup> It would seem that this work is a continuation of the R 106 Compliance Project.
- 10.67 Fifth, it is essential that the database maintained by the regulator contains all information concerning the lifecycle of greyhounds, which it is necessary to record for the purpose, so far as possible, of tracking each animal and exposing systemic welfare issues to which the industry must respond. Injury statistics and euthanasia rates are the most obvious but there may be others. The contents of the database must be developed by the regulator. The Commission recommends that it be developed with the assistance of persons with animal welfare and veterinary expertise.
- 10.68 Once the contents of the database have been settled, they should be enshrined in the Act governing the regulator, be that GRNSW, the Greyhound Racing Integrity Commission ("GRIC") or some other entity, or in regulations. The Act should impose an obligation to maintain the information and preserve it for a period of ten years.<sup>1154</sup> The integrity and reliability of the database should be the subject of a yearly independent audit.
- 10.69 The Commission notes that the concept of regulating the contents of a lifecycle database for greyhounds is not new.
- 10.70 The *Welfare of Racing Greyhounds Regulations 2010* (UK) ("the Greyhound Welfare Regulations (UK)"), which regulate the five independent tracks in Great Britain, require certain lifecycle information to be kept on a database so that the animals can be tracked.<sup>1155</sup> The Commission considers that, although these regulations provide some guide, they are plainly rudimentary and require development. They are limited to race day welfare only. The Greyhound Welfare Regulations (UK) are currently the subject of review. Initial findings have been released by the Department for Environment, Food and Rural Affairs ("the DEFRA"). Invitations to consult in relation to those findings were issued on 6 November 2015.<sup>1156</sup> The DEFRA is yet to release its final report.

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<sup>1152</sup> GRNSW website, "106 Compliance Project – What you need to know": <<http://www.thedogs.com.au/Uploads/FAQ%20-%20GA106.pdf>> (accessed 14 May 2016).

<sup>1153</sup> GRNSW Submission dated 7 June 2016, [93].

<sup>1154</sup> This is the period prescribed in the *Welfare of Racing Greyhounds Regulations 2010* (UK) ("the Greyhound Welfare Regulations (UK)").

<sup>1155</sup> Greyhound Welfare Regulations (UK), Pt 2.

<sup>1156</sup> Department for Environment Food and Rural Affairs (UK) website, "Consultation on the initial findings of the Review of the Welfare of Racing Greyhounds Regulations 2010": <[https://consult.defra.gov.uk/animal-health-and-welfare/consultation-on-the-racing-greyhounds-review/supporting\\_documents/Consultation%20letter%20of%20the%20Welfare%20of%20Racing%20Greyhounds%20Regulations%202010.pdf](https://consult.defra.gov.uk/animal-health-and-welfare/consultation-on-the-racing-greyhounds-review/supporting_documents/Consultation%20letter%20of%20the%20Welfare%20of%20Racing%20Greyhounds%20Regulations%202010.pdf)> (accessed 14 May 2016).

### **Encouraging responsible breeding practices**

- 10.71 No date was provided for the delivery of the aspiration/strategy to encourage responsible breeding practices. It was another one which required “ongoing implementation and consideration.”
- 10.72 The Project Welfare Findings made reference to responsible breeding as a matter which needed to be addressed so as to “... monitor excessive wastage through poor breeding practices”.<sup>1157</sup> It referred, amongst other matters, to the need to develop a code of practice for breeders. It also noted breeders’ obligations under the *Prevention of Cruelty to Animals Act 1979* (NSW) (“the POCTAA”) and under [10.1.1.9] of the “NSW Animal Welfare Code of Practice – Breeding Dogs and Cats” (“the enforceable Breeding Code”).<sup>1158</sup> The enforceable Breeding Code provides that breeding females must not have more than two litters in any two-year period, unless with the written approval of a veterinary practitioner. Ironically, as part of its efforts to combat excessive breeding and wastage, GRNSW recently introduced breeding restrictions which are less onerous. Breeding females must not whelp more than two litters in any 18-month period.<sup>1159</sup> As has been noted in Chapter 9, this breeding “restriction” was reached by way of compromise between GRNSW and industry participants.
- 10.73 The ‘next step’ was described as being a review by management of the legislation and the Rules and the making of a recommendation to the Board on a “Responsible Breeding Policy” and associated changes to the Rules.<sup>1160</sup> This did not occur. Worse, GRNSW continued to promote a scheme which encouraged overbreeding. Established in 2006, the “Blue Paws” scheme sought to promote, develop and encourage increased investment in the breeding industry. Owners of greyhounds 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. The “Blue Paws” scheme was abandoned by GRNSW on 1 July 2015.
- 10.74 It is understandable that breeding practices would need to be considered, so long as breeding practices were irresponsible and the wastage levels high. Nevertheless, it is unfortunate that nothing concrete was achieved for so many years. It is a major welfare issue which continues to plague the industry and it causes the wider community great concern. Breeder’s licences were not put into place until 1 July 2015. That was the day upon which the GRNSW Breeding Code commenced. Nothing of substance occurred between 2009 and 2015.
- 10.75 Overbreeding is addressed in Chapter 12. However, it is relevant at this point to consider how breeding practices were addressed in GRNSW’s annual reports.
- 10.76 The GRNSW Annual Report 2011 did not mention responsible breeding practices. It did, however, mention breeding in terms of its financial contribution to the sport and the State. In his report, the Chief Executive said:

NSW has long been the leading breeding state and the largest contributor to the stock of racing greyhounds in Australia. It is therefore no surprise that the Access Economics report found that breeding and training was the single most important sector within the sport, accounting for \$83 million of the sport’s economic contribution to the NSW economy during the 2009/10 financial year.<sup>1161</sup>

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<sup>1157</sup> Ex E (28 September – 2 October 2015), p. 8.

<sup>1158</sup> Ibid, p. 9. This is an enforceable code of practice created under the *Prevention of Cruelty to Animals Regulation 2012* (NSW) (“POCTAR”).

<sup>1159</sup> GRNSW Breeding Code: Ex NN (17-19 November 2015) cl. 16.6.

<sup>1160</sup> Ex E (28 September – 2 October 2015), p. 9.

<sup>1161</sup> GRNSW Annual Report 2011, p. 6.

- 10.77 There was little said in the GRNSW Annual Report 2012 to suggest that there had been any real progress in encouraging responsible breeding. In reporting the progress of Chasing 2020, it was noted that training material had been developed during 2011-2012 and seminars to commence in October 2012 would include an “introduction” to responsible breeding.<sup>1162</sup>
- 10.78 Responsible breeding practices were not mentioned in the part of the GRNSW Annual Report 2013 which reported on the progress of Chasing 2020. Rather, it was reported as something which would be an area of “focus” in the 12 months to follow. More particularly, Mr Hogan reported that there would be a “continued focus on measures to improve the breeding process and reduce the number of greyhounds bred that do not ultimately race”.<sup>1163</sup> To suggest that there would be a “continued focus” was simply wrong. There had never been any focus on responsible breeding and reducing the number of greyhounds bred. Responsible breeding and reducing the number of greyhounds bred had no real relevance to GRNSW’s operations, other than to provide content for aspirational statements in public documents.
- 10.79 In the GRNSW Annual Report 2014, there was no mention of Chasing 2020. As has been noted, this annual report concentrated on the NGWS. The annual report was published after the Select Committee had reported. The Chairman had this to say:
- GRNSW is acutely aware that the continued success of the greyhound racing industry is largely dependent on continued improvements in animal welfare and this joint strategy aims to achieve these improvements in all areas of the greyhound industry including breeding, racing, re-homing as well as participant education.<sup>1164</sup>
- 10.80 One of the welfare ‘initiatives’ in the NGWS was reported to be “tighter controls on breeding regulation and the promotion of more responsible breeding practices”.<sup>1165</sup> To speak of “tighter controls” was inapposite. There were no controls in place. Breeding was, and remains, out of control.

## Strategic plans and welfare

- 10.81 GRNSW informed the Commission that, historically, it had not afforded sufficient resources or priority to welfare outcomes. Strategic planning for the industry had been “weighted towards commercial considerations” with “welfare largely regarded as a hygiene factor”.<sup>1166</sup> The statutory requirement to produce strategic plans and to report against them should have provided a means whereby the welfare requirements of greyhounds could be recognised and implemented over time.
- 10.82 The Commission considers that strategic plans remain a means by which GRNSW (or GRNSW and a separate regulator) can be held to account in relation to the maintenance and enforcement of appropriate welfare standards.
- 10.83 In its submission to the Five Year Statutory Review of the Act, the Australian Veterinary Association (“AVA”) submitted that the Act should be amended to ensure that the advancement of the welfare of greyhounds was included in GRNSW’s strategic plan, and that public reporting of progress towards the targets in the plan in relation to animal welfare should be mandated.<sup>1167</sup> Although the AVA, like many other interested parties who made submissions to the Commission, advocated that there should be an independent regulatory authority, that does not mean that, if

<sup>1162</sup> GRNSW Annual Report 2012, p. 23.

<sup>1163</sup> GRNSW Annual Report 2013, p. 6.

<sup>1164</sup> GRNSW Annual Report 2014, p. 3.

<sup>1165</sup> Ibid, p. 10.

<sup>1166</sup> GRNSW Response to Order 1 (Part 2) dated 15 May 2015, p. 2.

<sup>1167</sup> Australian Veterinary Association Limited, Submission 12 to the Five Year Statutory Review dated 2 March 2015, pp. 2-3.

GRNSW is to continue to be responsible for the commercial side of the industry only, it should not be required, when carrying out its commercial functions, to initiate, develop and implement policies conducive to the welfare of the greyhounds.

- 10.84 The Commission agrees with the submission of the AVA. The Commission recommends that the Act be amended to require GRNSW (and any new regulator) to include in its strategic plan the measures it will take, in the three years which follow, for the advancement of the welfare needs of greyhounds. The Act currently requires GRNSW to report progress on the implementation of its strategic plans in its annual reports.<sup>1168</sup> In the past, self-reporting in purported compliance with the Act was entirely inadequate. At least in the short term, performance against future strategic plans must be the subject of an annual independent audit. That audit should occur prior to the publication of each of GRNSW's annual reports and its results should be published in each annual report.

## GRNSW's current strategic plan

- 10.85 It was not until 16 July 2015 that GRNSW announced that it was seeking to develop a further strategic plan for the greyhound racing industry in consultation with the GRICG. It sought input from participants by way of an online survey which was to be completed five days later, namely, by 21 July 2015.<sup>1169</sup> GRNSW estimated that participants would require 15 minutes to complete the survey. If GRNSW intended to include animal welfare as a priority in its new strategic plan it omitted to say so. What it did say was as follows:

The work to develop a new strategic approach will be greatly assisted by consultation with industry stakeholders on potential options to identify a preferred model that will support improved race club infrastructure and amenities, increase and distribute prizemoney to enhance competitiveness with other jurisdictions and attract new participants to the sport.<sup>1170</sup>

- 10.86 On 7 June 2016 GRNSW informed the Commission that:

The Chasing 2020 Strategic Plan devised by former management has been superseded by two new strategic plans commissioned by the new GRNSW management team and completed by independent external consultants: (a) in August 2015, KPMG provided GRNSW with a report in relation to the future strategic position of GRNSW entitled "Articulating the way forward" (See Appendix K to GRNSW's written submissions to the Commission dated 24 August, 2015). It was fundamentally aimed at guiding GRNSW through the period of transition during and following the Special Commission of Inquiry, and identifying avenues for Club rationalisation (and contraction in the size of the code). No criticism is directed to that report. [(b)] GRNSW's Joint Working Group has also separately developed the report "Implementing reform in the New South Wales greyhound racing industry" to identify practical means of implementing the KPMG report. GRNSW plans to make decisions in relation to the future course for the industry (and its size) with reference to each of these documents, and to the recommendations of the Commission (and Government response to it) as to issues impacting on the future size and scope of the industry.<sup>1171</sup>

- 10.87 In Chapter 26, the Commission addresses the financial implications of GRNSW's current strategic plan(s). However, it is also important that any strategic plan for the industry addresses the welfare of the industry's greyhounds moving forward.

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<sup>1168</sup> The Act s. 12(4).

<sup>1169</sup> Article "GRNSW Launches Online Survey" by GRNSW, 16 July 2015, *GRNSW website*: <<http://www.thedogs.com.au/NewsArticle.aspx?NewsId=6630?>> (accessed 14 May 2016).

<sup>1170</sup> *Ibid.*

<sup>1171</sup> GRNSW, Submission to the Commission dated 7 June 2016, [37].

10.88 By way of background, when GRNSW announced the development of its new strategic plan in July 2015, GRNSW also announced that it had retained KPMG in May 2015 to assist in developing a strategic approach for greyhound racing in NSW. GRNSW claimed that the work of KPMG would address potential options to restructure greyhound racing in this State:

... to address **fundamental welfare** and viability issues and reposition the industry to promote a stronger, more resilient and vibrant sport and enable responsible growth into the future.<sup>1172</sup>  
(Emphasis added)

10.89 In its 24 August 2015 submission to the Commission, GRNSW referred to KPMG’s work and provided a copy of the report (“the KPMG Report”). GRNSW noted that:

KPMG was engaged to assist GRNSW to develop a Strategic Plan to forge a new sustainable pathway for greyhound racing. The Strategic Approach will integrate enhanced integrity **and welfare outcomes** but also consider systemic industry issues to reposition NSW greyhound racing industry as a high quality and commercially viable sport.<sup>1173</sup> (Emphasis added)

10.90 GRNSW noted that there were differing interpretations of the word “sustainability” and, accordingly, it had engaged two experts.<sup>1174</sup> The Commission took this to mean, as the Terms of Reference make clear,<sup>1175</sup> that the question of whether the industry is sustainable depends upon both financial and welfare considerations. In support of the contention that GRNSW was financially sustainable, GRNSW provided the Commission with a report of an accountant, Dr Rod Ferrier. This report is addressed in Chapter 25.

10.91 GRNSW informed the Commission that:

... the activation of GRNSW’s Strategic Approach will ultimately depend on its financial capability to deliver enhanced outcomes for the industry.<sup>1176</sup>

10.92 The KPMG Report is entitled “Articulating the Way Forward”. By reference to that Report, GRNSW claimed that it had designed a strategic approach to reposition the industry via a series of “transformational steps”, which were targeted at addressing four “focus areas”. They were described as follows:

- (a) **Welfare and Integrity:** raise standards and promote compliance to maintain integrity of the sport and improve public perception;
- (b) **Club Network:** develop and position NSW greyhound clubs as Centres of Excellence;
- (c) **Wagering Product:** improve the wagering and financial reward landscape in NSW; and
- (d) **Governance:** implement a new governance model to address the changing industry structure.<sup>1177</sup>

10.93 The presence of the words “welfare and integrity” in connection with the work which was carried out by KPMG in relation to the development of a new strategic plan is misleading. KPMG was required to address the clubs network, wagering product and governance - i.e. (b), (c), and (d) above - to produce a “high level roadmap” for the industry moving forward.<sup>1178</sup> In other words, for the purposes of GRNSW’s new strategic plan, KPMG was required to consider certain commercial aspects of the industry only. GRNSW did not require KPMG to address two of the most critical issues which were considered by the Commission during the course of the inquiry: the welfare of the industry’s greyhounds; and whether GRNSW’s role as both regulator and

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<sup>1172</sup> Ibid.

<sup>1173</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [597].

<sup>1174</sup> Ibid, [597].

<sup>1175</sup> Terms of Reference A and C.6.

<sup>1176</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, [605].

<sup>1177</sup> Ibid, [600].

<sup>1178</sup> Ibid, Appendix M, p. 9.

promoter of the industry's commercial interests would sufficiently protect the integrity of greyhound racing. In fact, KPMG specifically *excluded* the following matters from its report:

- animal welfare;<sup>1179</sup>
- integrity;<sup>1180</sup>
- any reputational, societal or ethical/animal welfare and integrity assessments, and in particular any assessment of appropriate actions GRNSW had or might elect to take from an ethical or welfare perspective;<sup>1181</sup> and
- any initiatives to raise standards and promote compliance to improve the public perception of the sport.<sup>1182</sup>

10.94 KPMG also noted that it had not documented the options considered by GRNSW in forming its strategy.

10.95 KPMG made the following observation in relation to animal welfare and integrity:

GRNSW are investigating, developing and implementing a range of welfare and integrity initiatives to drive improved welfare and integrity outcomes- please refer to the GRNSW Infographic for further details.<sup>1183</sup>

10.96 GRNSW informed the Commission that the “Infographic”<sup>1184</sup> captured the “specific welfare and integrity initiatives GRNSW has been investigating, developing and implementing”.<sup>1185</sup>

10.97 The Infographic might be more aptly described as an ‘Infomercial’. It consists of one page. It is entitled “Greyhound Racing NSW is changing”. Like Chasing 2020, the Infographic is largely aspirational. It is much like the first draft of a document recording ideas for a start-up business. There is little detail and there are no timelines against which performance can be measured. It is unlikely that the Infographic was developed with the assistance of any independent welfare expertise. The Infographic includes the following matters:

- **Evidence Based Policy Development** – Investing in research to inform policy approach;
- **Welfare & Integrity Fund** – To support a raft of measures aimed at improving integrity and welfare outcomes for greyhounds;<sup>1186</sup>
- **Extending the Racing Careers of Greyhounds** – Investigating initiatives to improve career longevity while enhancing Masters Racing;
- **Revised Code of Practice** – For participants to outline minimum standards for the care of greyhounds;
- **Track Design Review** – To ensure safe racing;
- **New Industry Supervision Strategy** – Intelligence led, outcomes focused and risk based approach;

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<sup>1179</sup> Ibid.

<sup>1180</sup> Ibid.

<sup>1181</sup> Ibid.

<sup>1182</sup> Ibid.

<sup>1183</sup> Ibid, Appendix M, p. 5.

<sup>1184</sup> Ibid, Appendix N.

<sup>1185</sup> Ibid, [547].

<sup>1186</sup> The GRNSW Annual Report 2015 suggests that primarily this fund will be used: to support the GAP Program and contribute to veterinary costs of greyhounds which are rehomed and successfully complete the ‘Greenhounds’ program; for additional marketing for the greyhound breed; for unidentified compliance resources; and for increased drug detection measures.

- **Introduction of Licensing** – Ensuring ALL industry participants and facilities are registered, contribute to the costs of regulation and benefit from improved industry supervision. Developing competency based accreditation for industry;
- **Drug Detection Initiatives** – Enhancing integrity of swabbing operations. Increasing the number of samples. Investing in research and education to address known and emerging risks;
- **Welfare At The Centre Of Everything We Do** – Engaging a Chief Veterinary Officer to drive welfare strategy and enhance veterinary services;<sup>1187</sup>
- **Welfare & Integrity Hotline** – Independent hotline to provide information and report concerns;
- **A New Approach to Industry Engagement** – Investing in awareness, educative and guidance material for participants.<sup>1188</sup>

10.98 The Commission was provided with a further document concerning GRNSW’s future plans for the industry. It is a further Infographic described as a “Strategic Plan”.<sup>1189</sup> In its submissions to the Commission, GRNSW referred to this document in the following terms:

GRNSW is focussed on creating a sustainable and vibrant vision for the future for the sport. Planning for the future involves establishing a strategic model that will implement changes across the industry and these themes are encapsulated in the Strategic Plan Infographic at Appendix O.<sup>1190</sup>

10.99 To the extent that the Strategic Plan Infographic identified by GRNSW touches on integrity and animal welfare, it merely repeats the material in the Infographic referred to above. The balance concerns those commercial matters which were the subject of the KPMG Report – club networks, wagering product and governance.

10.100 Both infographics were published in GRNSW’s Annual Report 2015. In that report, GRNSW stated that a recently established Joint Working Group (“the JWG”) would further develop the detail of the “strategic approach” and provide recommendations to the GRNSW Interim Chief Executive, Mr Paul Newson, on an “implementation roadmap”.<sup>1191</sup>

10.101 The JWG had Terms of Reference.<sup>1192</sup> It was required to investigate, develop and provide recommendations to Mr Newson on the “strategic direction” for greyhound racing in NSW including, in particular, further developing the “high level strategic plan developed by GRNSW in conjunction with KPMG.”<sup>1193</sup> In a preliminary draft report provided to GRNSW on 18 December 2015, the JWG made 17 recommendations, some of which touched on the welfare of greyhounds.<sup>1194</sup> In its final report provided to GRNSW on 29 January 2016 (“the JWG Report”), the JWG made 20 recommendations, five of which related to welfare and the reduction of wastage.<sup>1195</sup> They concerned expanding registration, licencing and monitoring to cover the entire

<sup>1187</sup> The Commission notes that this is not a new development. GRNSW appointed a Head Racing Veterinarian following its abandonment of the Veterinary Advisory Panel in 2011.

<sup>1188</sup> GRNSW, Submission 769 to the Commission dated 24 August 2015, Appendix N.

<sup>1189</sup> Ibid, Appendix O.

<sup>1190</sup> Ibid, [603].

<sup>1191</sup> GRNSW Annual Report 2015, p. 3.

<sup>1192</sup> Ibid, pp. 3-4.

<sup>1193</sup> Ibid, p. 3.

<sup>1194</sup> JWG, preliminary draft report “Implementing reform in the New South Wales greyhound racing industry: Report to the interim Chief Executive of Greyhound Racing NSW from the Joint Working Group (18 December 2015), pp. 4-11.

<sup>1195</sup> JWG, final report “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), p. 2.

lifecycle, supporting the development and introduction of minimum welfare standards, the introduction of a State-wide breeding quota and the expansion of greyhound rehoming. These matters have been addressed in a number of Chapters of this Report.

- 10.102 To the extent that GRNSW has foreshadowed the inclusion of welfare in its strategic plans, the Commission is not satisfied that all of the measures suggested by the JWG will necessarily move beyond the aspirational. The Commission's examination of these measures in other Chapters suggests that, even if adopted, there will remain an unacceptably high level of wastage.
- 10.103 GRNSW's Strategic Approach suggests that there remains a significant risk that a number of initiatives will lead to little more than the renaming of old roles, the creation of new ones, further 'reviews', and further commitments to aspirations and initiatives which have not been the subject of critical analysis by those possessing independent welfare expertise to judge their likely effectiveness.

## GRNSW's continuing welfare obligations

- 10.104 As has been noted, the establishment of a new regulator by Government should not mean that, in the exercise of its commercial functions, GRNSW can disregard the welfare of greyhounds. If the industry is to continue then it is vital that, in promoting the industry, GRNSW does so in a way which, to the extent possible, protects their welfare needs. Further, it needs to be accountable in terms of delivering measurable outcomes.
- 10.105 In Victoria this question was also considered by Dr Charles Milne, Chief Veterinary Officer, in his 2015 "Investigation into Animal Welfare and Cruelty in the Victorian Greyhound Industry". He came to the view that the Board of GRV should have an explicit function under the *Racing Act 1958* (Vic) to ensure high animal welfare outcomes across the greyhound industry. He recommended that s. 75 of the *Racing Act 1958* (Vic.) be amended to include the promotion of animal welfare as a function of the Board.<sup>1196</sup>
- 10.106 GRNSW does not have a Board as such, although its members are often referred to in that way. The Commission agrees with the sentiment reflected by Dr Milne. It recommends that s. 9 of the Act be amended to include a function of promoting the welfare of greyhounds across the industry. The Act should be further amended to impose a specific obligation upon members of GRNSW to do likewise.

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<sup>1196</sup> Dr Charles Milne, Chief Veterinary Officer, report "Investigation into Animal Welfare and Cruelty in the Victorian Greyhound Industry" (30 April 2015), pp. 31-35.

## Recommendations

37. The *Greyhound Racing Act 2009* (NSW) should be amended to require Greyhound Racing NSW to include in its strategic plan the measures it will take, in the three years which follow, for the advancement of the welfare needs of greyhounds. A like provision should be contained in the Act establishing any new regulator.
38. Performance against future strategic plans must be the subject of an annual independent audit. The audit should occur prior to the publication of the annual reports and its results should be published in the relevant annual reports.
39. Section 9 of the *Greyhound Racing Act 2009* (NSW) should be amended to include, as a function of Greyhound Racing NSW, promoting the welfare of greyhounds across the industry. The Act should be further amended to impose a specific obligation on members of Greyhound Racing NSW to do likewise.



# 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</i> (NSW)
Act	<i>Greyhound Racing Act 2009</i> (NSW)
Crimes Act	<i>Crimes Act 1900</i> (NSW)
CAA	<i>Companion Animals Act 1998</i> (NSW)
CAR	<i>Companion Animals Regulation 2008</i> (NSW)
cl.	Clause
GAR	Greyhounds Australasia Rules
Greyhound Welfare Regulations (UK)	<i>Welfare of Racing Greyhounds Regulations 2010</i> (UK)
HRA	<i>Harness Racing Act 2009</i> (NSW)
ICAC Act	<i>Independent Commission Against Corruption Act 1988</i> (NSW)
LR	Local Rule (of the Rules)
NPWA	<i>National Parks and Wildlife Act 1974</i> (NSW)
POCTAA	<i>Prevention of Cruelty to Animals Act 1979</i> (NSW)
POCTAR	<i>Prevention of Cruelty to Animals Regulation 2012</i> (NSW)
R	Rule (of the GARs or the Rules)
RATA	<i>Racing Appeals Tribunal Act 1983</i> (NSW)
RATR	<i>Racing Appeals Tribunal Regulation 2010</i> (NSW)
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.