



# Submission to the Department of Natural Resources and Environment Tasmania



## Draft Racing Regulation and Integrity Bill 2023

**Prepared by the Coalition for the Protection of Greyhounds  
October 2023**

*We acknowledge the traditional Owners of Country across Australia. We pay our respects to Elders past, present and emerging and recognise the role Elders play in maintaining connection to Country, Culture and Community.*

**End greyhound suffering**

## About the Coalition for the Protection of Greyhounds

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The Coalition for the Protection of Greyhounds (CPG) is a not-for-profit committed to ending greyhound suffering by exposing the cruelty and corruption of the greyhound racing industry and lobbying for law reform. We have members across Australia.

We call on Australia's state governments to:

**End taxpayer funding.** A national survey on attitudes towards dog racing revealed that 69% of Australians oppose the use of taxpayer funds to prop up the greyhound racing industry. State and territory governments must listen to their constituents and stop diverting funds from education, healthcare and employment programs to support this archaic and callous industry.

**Stop unsustainable breeding.** The greyhound racing industry breeds many more dogs than can be rehomed. Caps on breeding must be introduced to ensure that all dogs bred by the industry are able to live out their lives as pets at the end of their racing career.

**Implement whole-of-life tracking.** Greyhounds in the racing industry are vulnerable to unnecessary euthanasia, particularly those puppies who do not race and dogs who are rehomed by industry participants. A system must be implemented to monitor the welfare of each greyhound for their entire life.

**Establish independent regulators in all jurisdictions.** Most jurisdictions rely on self-regulation by the industry, which has been shown again and again to be corrupted by conflicts of interest. Governments benefiting from betting tax revenue must establish independent regulators that prioritise the welfare of greyhounds.

**Stop building new tracks.** Attempts by the industry to build 'safe' tracks have failed. The evidence shows that greyhounds continue to be injured and killed on all track designs currently in operation, including straight tracks. There is no such thing as a safe dog racing track.

## **Executive summary**

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CPG appreciates the opportunity to make a submission on the Draft Racing Regulation and Integrity Bill 2023 (the Bill) and the Draft Racing Regulation and Integrity (Consequential Amendments) Bill 2023.

A number of concerns with the proposed amendments are identified, including:

- Existing and future risks of regulatory capture are not addressed. This is exemplified by the fact that all significant management structures (especially Tasracing Board) comprise only, or mostly, of persons with industry experiences and/or links. This creates an industry bias in the organisation, which poses an unacceptable risk of regulatory capture.
- Significant conflicts of interest are created by making a single agency (Tasracing) responsible for both the promotion, marketing and funding of the racing industry, as well as regulating this industry. The conflicts that these divergent responsibilities create will be impossible to manage. As a result, the industry will not be impartially and effectively regulated, which in turn will do nothing to restore the public's confidence in Tasmanian racing.
- Consultations are limited to industry stakeholders. A key principle of best regulatory practice regulation standards (which other States and the Commonwealth have published, but not the Tasmanian Government) is effective and meaningful engagement with all stakeholders, including community and animal welfare groups.
- Opportunities for increasing the transparency and accountability of the regulatory framework have not been leveraged, for example including veterinary and animal welfare expertise in key advisory bodies and publishing comprehensive information about the regulator's performance. The latter, especially, is also a key principle of best practice regulation standards.

CPG makes the following eight recommendations:

### **Recommendation 1**

That the Tasmanian Government amend the Draft Bill to mandate the publication of detailed regulatory information, consistent with best practice regulation standards and guidelines.

### **Recommendation 2**

That Part 9 of the Draft Racing Regulation and Integrity (Consequential Amendments) Bill 2023 be amended as follows:

- remove from section 25 of the *Racing (Tasracing Pty Ltd) Act 2009* the current eligibility of persons actively involved in one of the three racing codes to be nominated to the Board of Directors, and

add to section 25 of the *Racing (Tasracing Pty Ltd) Act 2009* the eligibility of at least three persons with expertise and experience in animal welfare to be nominated to the Board of Directors.

### **Recommendation 3**

That section 46 of the Draft Bill be amended to include additional advisory positions to the TRAB:

- at least one person with veterinary qualifications and experience, with no past or present links to any code of racing, to be appointed by the Governor to attend hearings of the TRAB, when requested by the TRAB, to provide advice on animal health matters, and
- at least one person with experience and expertise in animal welfare, to be appointed by the Governor to attend hearings of the TRAB, when requested by the TRAB, to provide advice on animal welfare matters.

### **Recommendation 4**

That the following responsibilities, currently assigned to Tasracing by Part 5 of the Draft Bill, be removed from the list of Tasracing responsibilities and added to the list of TasRIC responsibilities under Part 2 of the Draft Bill:

- s33(2)(a),
- s33(2)(b),
- s33(2)(c),
- s33(2)(g),
- s33(2)(i),
- s33(2)(j),
- s33(2)(k),
- s33(2)(l),
- s33(2)(m),
- s33(2)(n),
- s33(2)(o),
- s33(4),
- s33(7),
- s34,
- s36,
- s37,
- s38,
- s40,
- s41,
- s42,
- s43(1)(a),
- s43(1)(b),

- s43(1)(c), and
- s43(2).

A consequential amendment must be made to section 32 of the Draft Bill to require the Racing Integrity Committee to report to the TasRIC, not Tasracing.

### **Recommendation 5**

That sections 30 and 32 of the Draft Bill be amended to include the publication of meeting agendas and meeting minutes.

### **Recommendation 6**

That sections 9 and 50 of the Draft Bill be amended to include consultation/meetings with non-industry stakeholders, such as animal welfare and other community groups.

### **Recommendation 7**

That section 25 of the Draft Bill be amended to include the publication of information relating to the performance of the Tasmanian racing industry regulatory framework. Data must be provided separately for each of the three racing codes, i.e. horse racing, harness racing and greyhound racing.

### **Recommendation 8**

That:

- subsection 29(2) of the Draft Bill be amended to mandate the Integrity and Welfare Advisory Committee membership to include a person with veterinary qualifications and experience, and no prior or current links to the racing industry, and
- subsection 33(7) be amended to require consultation with the Integrity and Welfare Advisory Committee on the development of any policies, procedures and guidelines in relation to animal welfare.

## **The Bill maintains existing regulatory capture risks**

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### **What is regulatory capture?**

Victoria's Independent Broad-based Anti-corruption Commission conducted an assessment of corruption risks in regulatory authorities and identified regulatory capture as one of four key corruption risks, as follows:<sup>1</sup>

"With an increased reliance on private industry to deliver what were once public services, there is potential for conflicted relationships. This can lead to 'regulatory capture', where regulators and their employees potentially align their values and actions with that of the industry they are regulating – rather than with the values and legislated purpose of the regulator."

This definition aligns with those published by experts in the field of regulation<sup>2,3</sup> and was used by the Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS) in its report *Statutory Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation Report No. 1 of the 45th Parliament*.<sup>4</sup>

The PJCCFS noted the following regulatory capture risks:

- staff moving between industry and regulatory jobs
- secondments
- where regulatory staff are embedded in private sector organisations (that is, required to conduct their work within the workplace of industry participants, away from their home base at the regulator).

It is important to note that although regulatory capture can be a red flag for corruption, it does not imply corruption and CPG does not suggest that Tasracing or the Office for Regulatory Integrity (ORI) are corrupt. However, by being subject to regulatory capture a regulatory agency will make poor or biased decisions.

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<sup>1</sup> <https://www.ibac.vic.gov.au/publications-and-resources/article/corruption-risks-associated-with-public-regulatory-authorities>

<sup>2</sup> [https://faculty.haas.berkeley.edu/dalbo/Regulatory\\_Capture\\_Published.pdf](https://faculty.haas.berkeley.edu/dalbo/Regulatory_Capture_Published.pdf)

<sup>3</sup> <https://www.law.upenn.edu/live/files/4946-pprfinalconvenersreportpdf>

<sup>4</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/No1of45thParliament/~/\\_media/Committees/corporations\\_ctte/No1of45thParliament/report.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of45thParliament/~/_media/Committees/corporations_ctte/No1of45thParliament/report.pdf)

## Should Tasmanians be concerned about Tasracing and/or ORI being affected by regulatory capture?

### Yes

CPG believes the current greyhound racing regulatory system is affected by regulatory capture for the following reasons:

#### *Inadequate transparency*

- Tasracing is established as a company and the *Racing (Tasracing Pty Ltd) Act 2009* provides no obligation to publish any information about its regulatory performance. Tasracing provides no such information.
- ORI similarly does not provide code-specific information about regulatory activities, only aggregated data from all three racing codes.
- Aside from Stewards reports and decisions made by stewards in relation to breaches of the racing rules, there is no information to assure the Tasmanian public that best practice regulatory principles are applied to the regulation of Tasmanian racing.
- Lack of transparency was also noted in the *Review of the Racing Act 2004* report.

#### *Regulator values and actions are aligned with the racing industry*

- Tasracing routinely publishes articles defending industry participants against comments/criticisms made by third parties.<sup>5,6,7,8</sup> This is exactly the kind of behaviour one would expect from a regulatory agency suffering from regulatory capture.
- Neither ORI or Tasracing have regular meetings with non-industry stakeholders. This means the only regular contact with stakeholders are those representing the racing industry. Therefore, those involved in regulating Tasmania's racing industry are ignoring one of the best practice regulation principles, i.e. to engage meaningfully with stakeholders, including the community (see below).

This bias toward industry stakeholders is reflected in the decisions made in response to rule breaches. Examination of decisions made in relation to greyhound racing rule breaches shows that they favour light touch penalties that do not prevent the offender from continuing to race their dogs.<sup>9</sup>

#### *PJCCFS regulatory capture risks*

- Section 25 of the *Racing (Tasracing Pty Ltd) Act 2009* specifies all six Tasracing Board members (not including the Chair) must have experience and expertise in one of the racing codes and/or have direct involvement in the industry. There is no requirement for the Tasracing Board membership to include a broader range of

<sup>5</sup> <https://tasracingcorporate.com.au/2023/08/15/tasracing-statement-in-response-to-animal-liberation-tasmania-social-media-post/>

<sup>6</sup> <https://tasracingcorporate.com.au/2023/07/14/response-to-deborah-flemmings-mercury-letter-14-july-2023/>

<sup>7</sup> <https://tasracingcorporate.com.au/2023/07/11/media-statement-gap-errors-of-fact/>

<sup>8</sup> <https://tasracingcorporate.com.au/2023/09/07/tasracing-statement-in-response-to-comments-made-by-kristie-johnston-in-relation-to-thoroughbred-trainer-scott-brunton/>

<sup>9</sup> <https://nre.tas.gov.au/racing/stewards-inquiries-decisions>



experience, such as animal welfare. Restricting membership to such a narrow range of experience (with the exception of the Chair), poses a regulatory capture risk, as other relevant views and perspectives are not represented. This, and the absence of formal mechanisms to engage meaningfully with community and animal welfare groups sets an example to the rest of the organisation that the views they represent are not valued.

- Stewards spend a significant amount of time at racetracks, where they are exposed to a range of industry participants. It has been noted, including by the PJCCFS, that over a period of time, such engagement can lead to an alignment of regulator staff with the views of the industry. Neither ORI or Tasracing have published fraud control strategies to give Tasmanians the confidence that the racing industry is regulated without bias.

The current regulatory framework overseeing racing in Tasmania has a number of features that are well-known to be regulatory capture risks. There is some evidence, for example Tasracing publicly defending industry participants against comments/criticisms made by third parties, that to some extent, regulatory capture has occurred.

It is therefore reasonable for Tasmanians to expect any legislative amendments to eliminate these risks, or at least mitigate them more effectively.

## **Does the Draft Racing Regulation and Integrity Bill 2023, and the consequential amendments, effectively mitigate regulatory capture risks?**

**No**

*Inadequate transparency is not addressed*

- Section 25 of the Draft Bill specifies matters on which the Tasmanian Racing Integrity Commissioner (TasRIC) must include in their annual report. As TasRIC is not responsible for the conduct of regulatory actions, these will not be included in the TasRIC annual reports.
- Section 5 of the *Racing (Tasracing Pty Ltd) Act 2009* establishes Tasracing as a “company limited by shares and incorporated under the Corporations Act to perform functions relating to the governance of the racing industry and to provide administrative and financial services to that industry.” This means Tasracing must meet only reporting requirements under the Corporations Act 2001, which do not include reporting on regulatory actions under the Draft Bill.

The amendments proposed in the Draft Bill therefore do not address a fundamental flaw in the current regulatory framework, namely the lack of transparency.



The Tasmanian Government has not published best practice regulation guidelines. However, the Commonwealth,<sup>10</sup> Queensland,<sup>11</sup> Victorian<sup>12</sup> and NSW<sup>13</sup> have published such guidelines. A common element of all these guidelines is that a regulator should be transparent and accountable. The current Tasmanian racing regulatory framework fails in this respect. The legislative amendments provide the Tasmanian Government with an opportunity to establish a framework consistent with best practice principles, but the Draft Bill fails to achieve this.

In the absence of information about the performance of the regulatory framework it will not be possible for Tasmanians to determine if the racing industry is effectively regulated. It is therefore not clear how the Tasmanian Government expects to increase public confidence in an industry, which has lost its social licence.

### **Recommendation 1**

That the Tasmanian Government amend the Draft Bill to mandate the publication of detailed regulatory information, consistent with best practice regulation standards and guidelines.

#### *Industry bias is maintained*

- The Draft Racing Regulation and Integrity (Consequential Amendments) Bill 2023 does not make changes to s25 of the *Racing (Tasracing Pty Ltd) Act 2009*. Therefore, the racing industry bias on the Tasracing Board will be maintained.
- Subsection 33(2) of the Bill makes Tasracing responsible for the regulation of the Tasmanian racing industry.
- Paragraph 43(1)(a) of the Draft Bill makes Tasracing responsible for appointing Stewards, who have responsibility for enforcing the Rules of Racing.
- Subsection 33(6) must meet with racing clubs and racing industry associations at least quarterly. The legislation does not require Tasracing to meet with other stakeholder groups, such as animal welfare associations and community groups.

A number of references on regulatory capture risks and best regulatory practice have been provided in this submission (see footnotes on this and previous page). Based on these, it is clear that the Draft Bill will maintain existing regulatory capture risks, and create serious conflicts of interest between the different Tasracing's responsibilities. This latter point will be addressed further below. However, it is no longer acceptable for the Tasracing leadership to have direct connections with the industry they are charged to both promote and regulate. If the Tasmanian Government wishes to improve the public's confidence in this

<sup>10</sup> <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128>

<sup>11</sup> <https://s3.treasury.qld.gov.au/files/Queensland-Government-Regulator-Performance-Framework.pdf>

<sup>12</sup> <https://www.vic.gov.au/towards-best-practice-guide-regulators>

<sup>13</sup> <https://www.treasury.nsw.gov.au/sites/default/files/2019-01/TPP19-01%20-%20Guide%20to%20Better%20Regulation.pdf>

regulatory framework, it must be opened up to a broader representation of views, skills and experiences among the leadership group.

### **Recommendation 2**

That Part 9 of the Draft Racing Regulation and Integrity (Consequential Amendments) Bill 2023 be amended as follows:

- remove from section 25 of the *Racing (Tasracing Pty Ltd) Act 2009* the current eligibility of persons actively involved in one of the three racing codes to be nominated to the Board of Directors, and
- add to section 25 of the *Racing (Tasracing Pty Ltd) Act 2009* the eligibility of at least three persons with expertise and experience in animal welfare to be nominated to the Board of Directors.

Section 46 of the Draft Bill specifies membership for the Tasmanian Racing Appeal Board (TRAB). Subsection 46(5) specifies that three persons with experience in one of the three racing codes must be appointed to “to provide advice on racing matters” at TRAB hearings on request. This is another example of how the proposed legislation creates an industry bias at all decision-making levels.

CPG is of the strong view that section 46 must be amended to specify that at least one veterinarian with no links to either racing code and at least one person with animal welfare expertise and experience be appointed to provide advice on animal health and welfare matters. It is clear from the decisions currently being made about breaches of the greyhound racing rules that there is an industry bias, as evidenced by penalties that generally do not involve a disqualification period, and decisions that give weight to the offender’s excuses without challenge.<sup>14</sup>

### **Recommendation 3**

That section 46 of the Draft Bill be amended to include the additional advisory positions to the TRAB:

- at least one person with veterinary qualifications and experience, with no past or present links to any code of racing, to be appointed by the Governor to attend hearings of the TRAB, when requested by the TRAB, to provide advice on animal health matters, and
- at least one person with experience and expertise in animal welfare, to be appointed by the Governor to attend hearings of the TRAB, when requested by the TRAB, to provide advice on animal welfare matters.

<sup>14</sup> <https://nre.tas.gov.au/racing/stewards-inquiries-decisions>

## **The Bill maintains and creates conflicts of interests**

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### **No regulator should have responsibility for both promoting and regulating an industry**

Section 33 of the Draft Bill provides Tasracing with a conflicting suite of responsibilities, ranging from promoting Tasmanian racing locally, nationally and internationally, attracting sponsorship income and assisting racing clubs with promotion and marketing of their race events, to regulating the industry. This creates unavoidable tensions between the marketing and regulatory arms of Tasracing. If the regulatory arm does their work effectively, they will find non-compliances that adversely affect the image of the industry, which in turn affects Tasracing's ability to promote the industry and attract sponsorships. This, together with the current industry bias at the Tasracing Board and TRAB level leads to the conclusion that the Tasmanian racing regulation framework will fail.

Such conflicting organisational responsibilities have been shown to create directive goal ambiguity (the degree of leeway in how the responsibilities are operationalised) and priority goal ambiguity (interpretive leeway in how priorities are decided when they conflict).<sup>15</sup> These ambiguities lead to reduced managerial performance, which flows through the entire organisation. Indeed, Adam Finkel (University of Pennsylvania Law School) noted that:

"Goal ambiguity, wherein the simultaneous duty to police a regulated industry and promote it economically, or to deter harmful conduct while assisting firms already in compliance to further improve their performance, causes agencies to become jacks of all trades but masters of none."<sup>16</sup>

The Australia New Zealand School of Government (ANZSOG) has noted that regulatory agencies must be free from real or perceived conflicts of interest and avoid at all costs regulatory capture risks.<sup>17</sup>

It is simply naive to expect that the conflicts of interests and regulatory capture risks created by the regulatory model presented in the Draft Bill, and associated legislation, can be managed. CPG holds the strong view that the Draft Bill must be amended to separate all regulatory functions from responsibilities to promote and market the industry.

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<sup>15</sup> [Goal ambiguity and organisational performance](#)

<sup>16</sup> <https://www.law.upenn.edu/live/files/4715-finkel-ppr-bicregulatorediscussionpaper-06-2015pdf>

<sup>17</sup> <https://anzsog.edu.au/news/the-regulators-dilemma/>; <https://anzsog.edu.au/news/avoiding-regulatory-capture-and-regulatory-discord/>; <https://anzsog.edu.au/news/regulatory-capture-defining-it-refining-it-and-mitigating-it/>

**Recommendation 4**

That the following responsibilities, currently assigned to Tasracing by Part 5 of the Draft Bill, be removed from the list of Tasracing responsibilities and added to the list of TasRIC responsibilities under Part 2 of the Draft Bill:

- s33(2)(a),
- s33(2)(b),
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- s33(2)(o),
- s33(4),
- s33(7),
- s34,
- s36,
- s37,
- s38,
- s40,
- s41,
- s42,
- s43(1)(a),
- s43(1)(b),
- s43(1)(c), and
- s43(2).

A consequential amendment must be made to section 32 of the Draft Bill to require the Racing Integrity Committee to report to the TasRIC, not Tasracing.

## Other recommendations

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### Lack of transparency of the advisory committees

Part 3 of the Draft Bill specifies the establishment and functions of the Integrity and Animal Welfare Advisory Committee. Part 4 of the Draft Bill specifies the establishment and functions of the Racing Integrity Committee. Neither body is required to provide any information to the Tasmanian public about matters they consider and recommendations they make. This is a serious oversight. Given the role of these bodies in the regulatory framework, their legislated function must include publication of agendas and minutes of their meetings.

**Recommendation 5**

That sections 30 and 32 of the Draft Bill be amended to include the publication of meeting agendas and meeting minutes.

### Lack of consultation with non-industry stakeholders

A general feature of the proposed regulatory framework is that any requirements for regular meetings or consultation are limited to the racing industry. As described above, this leads to the industry bias in the regulatory bodies.

**Recommendation 6**

That sections 9 and 50 of the Draft Bill be amended to include consultation/meetings with non-industry stakeholders, such as animal welfare and other community groups.

### Regulatory information to be published

Currently, very limited data is published that would allow the Tasmanian public to ascertain the effectiveness with which the Tasmanian racing industry is regulated. The legislative review provides an opportunity to mandate publication of such data for each racing code. Section 25 covers the publication of a range of information by the TasRIC, but not specifically regulatory performance data. Publication of such information is a key component of best practice regulation guidelines (see references provided above).

**Recommendation 7**

That section 25 of the Draft Bill be amended to include the publication of information relating to the performance of the Tasmanian racing industry regulatory framework. Data must be provided separately for each of the three racing codes, i.e. horse racing, harness racing and greyhound racing.

**The Integrity and Welfare Advisory Committee membership must include a veterinarian**

Subsection 29(2) of the Draft Bill specifies membership of the Integrity and Welfare Advisory Committee. This does not include an independent veterinarian. CPG is of the view that this committee will not be able to provide advice in relation to animal welfare matters without a member with veterinary expertise. Further, this Committee must be consulted on the development of any policies, procedures and guidelines in relation to animal welfare.

**Recommendation 8**

That:

- subsection 29(2) of the Draft Bill be amended to mandate the Integrity and Welfare Advisory Committee membership to include a person with veterinary qualifications and experience, and no prior or current links to the racing industry, and
- subsection 33(7) be amended to require consultation with the Integrity and Welfare Advisory Committee on the development of any policies, procedures and guidelines in relation to animal welfare.