



Submission to NSW Government on Greyhound Racing Act 2017 Statutory Review

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School of Law and Justice

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Aaron Timoshanko is a Lecturer in the School of Law and Justice at the University of Southern Queensland. Aaron has previously held positions at the Queensland University of Technology, Griffith University and Flinders University.

Aaron's main research focus lies at the intersection of democracy, accountability and the regulation of animals; specifically, the expression of the public's values regarding the use of animals in the political and legal spheres.

Aaron's PhD thesis was conferred in 2018. Aaron's thesis examines whether the regulation of horses used in the ordinary course of hurdle racing and steeplechasing (collectively referred to as 'jumps racing') is democratically accountable to the public. The thesis uses regulatory theory and an 'indirect duties' approach to animal protection, which justifies the protection of animals due to the pernicious effects the poor treatment of animals can have on individuals and society as a whole. Aaron's thesis titled 'Democratising the Regulation of Horses Used in the Sport of Jumps

Racing' was awarded the 2018 Mollie Holman Medal for the best thesis for the Faculty of Law.

Aaron has been a member of the Voiceless Legal Advisory Council since 2015 and was an inaugural member of the South Australian Law Society's Animal Law Committee (2010-14). Before undertaking post-graduate study, Aaron worked in-house and as a solicitor in private practice.

Relevant to this Statutory Review, Aaron has co-authored:

- <https://theconversation.com/animal-welfare-laws-need-more-bite-to-stamp-out-live-baiting-38098>; and
- <https://theconversation.com/queensland-will-need-teeth-to-stop-the-greyhound-industry-bleeding-to-death-42749>

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Executive summary

Important regulatory measures have been introduced in the *Greyhound Racing Act 2017* ('the Act') to better regulate greyhound racing in New South Wales ('NSW'). However, further improvements are required to ensure that the regulation of greyhound racing in NSW remains responsive and permeable to the public's attitudes and expectations regarding the activities of Greyhound Racing New South Wales ('GRNSW').

The following submission outlines a series of recommendations which will help ensure that the activities of GRNSW align with the NSW public's attitudes and expectations of how greyhound racing is conducted in the State. As such, this submission employs a meta-regulatory approach to outcome-orientated measures.

Submission

1. Scope of the Greyhound Racing Act 2017

1.1. Are the governance arrangements for the industry appropriate?

- 1.1.1. The *Greyhound Racing Act 2017 Statutory Review July 2020 Discussion Paper* ('Discussion Paper') states that the 'key aim of the Act is to set the foundations and governance arrangements for a sustainable greyhound racing industry with high standards of animal welfare and integrity.'
- 1.1.2. The concept of 'sustainability' is undefined in the Discussion Paper, the Act and the *Greyhound Racing Regulations 2019* (NSW). It is assumed for this submission that sustainability in this context means the activities of the greyhound racing industry broadly align with the NSW public's attitudes and expectations. Failure to ensure that the greyhound racing industry's activities align with the public's attitudes and expectations could lead to another situation where the social licence of the industry is called into question, as was the case in the 2016 Special Commission of Inquiry into the NSW Greyhound Racing Industry ('the McHugh Inquiry'), which is not sustainable.¹ For this reason, 'sustainability' means the regulation of greyhound racing must be permeable and responsive to the public's changing attitudes and expectations towards the industry.
- 1.1.3. Viewed in this way, the current governance arrangements for the industry are not appropriate as there is no mechanism to measure the public's attitudes and expectations concerning greyhound racing. Without an appropriate mechanism to regularly measure and assess the public's attitudes and expectations against recent industry performance, a 'gap' will likely emerge between public expectations and reality. If this 'gap' between expectation and reality grows wide, the greyhound racing industry's social licence is compromised.
- 1.1.4. The below recommendations to the industry's governance arrangements will help ensure the regulation of greyhound racing in NSW remains permeable and responsive to the public's attitudes and expectations regarding greyhound racing in the State.

2. The Greyhound Welfare and Integrity Commission

2.1. Is the Commission's legislative objectives and functions appropriate and being actioned effectively?

¹ Michael McHugh, *Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales*, vol 1 (NSW Government, 2016) 22.

- 2.1.1. Under the Act, the Greyhound Welfare and Integrity Commission's ('the Commission') principal objectives are to 'maintain public confidence in the greyhound racing industry' and its key functions include 'undertak[ing] research and investigations into any aspect of... greyhound racing generally.'²
- 2.1.2. To maintain public confidence and ensure the activities of the greyhound racing industry align with the public's attitudes and expectations, the Commission needs to conduct empirical research to regularly measure the public's attitudes and expectations concerning greyhound racing. For reasons discussed below, such analysis must occur before any review of GRNSWs Operating Licence.
- 2.1.3. The findings from this empirical research must be representative of the NSW public. At a minimum, recent data regarding the rates of breeding, re-homing, injury, export and euthanasia of greyhounds in NSW should be presented to participants before quantitatively assessing their approval or disapproval of these data. Such measures will ensure the industry's performance aligns with the public's attitudes and expectations.
- 2.1.4. If the results of the empirical research indicate that the public believes, for example, the rates of injury or euthanasia in greyhound racing are too high, then this will form the basis of a key performance indicator (KPI), which are discussed below.

3. Greyhound Racing New South Wales

3.1. Is the Use of an Operating Licence Appropriate?

- 3.1.1. The use of an Operating Licence is an appropriate and necessary regulatory mechanism for the NSW greyhound racing industry.
- 3.1.2. The ability to withdraw the public's support for greyhound racing by amending, suspending or cancelling the Operating Licence is an important mechanism to ensure compliance with the new regulatory protections, given the previous failures of the greyhound racing industry.

3.2. Duration

- 3.2.1. Section 25 of the Act permits the Minister to grant an Operating Licence for a term of 5 years.³
- 3.2.2. The term of the Operating Licence is too long to be responsive to changes in the industry and social conditions.

² *Greyhound Racing Act 2017* (NSW) ss 11, 12(c).

³ *Ibid* s 25(2)(b).

- 3.2.3. It is recommended that the grant of an Operating Licence be no longer than 3 years. This duration permits GRNSW sufficient time to implement new policies and procedures.

3.3. Review Process and Advice from the Commission

- 3.3.1. The Act provides 'The Minister must consult the Commission before renewing, amending, suspending or cancelling an operating licence granted to GRNSW. Any advice provided by the Commission to the Minister in connection with the consultation process is to be made publicly available on the website of the Commission.'⁴
- 3.3.2. To ensure the activities of GRNSW align with the public's attitudes and expectations it is recommended that the Commission provide the Minister with the results of the empirical research discussed at 2.1.
- 3.3.3. Based on the results of the empirical research, it is further recommended that the Commission, in consultation with the Welfare Committee,⁵ recommend KPIs (discussed at 4.2) to the Minister who will make compliance with the KPIs a condition of the Operating Licence.⁶
- 3.3.4. If GRNSW fails to achieve the KPIs over the licence period, the Minister (based on the advice of the Commission, informed by the Welfare Committee) should consider suspending or cancelling GRNSW's Operating Licence.⁷
- 3.3.5. These recommendations combine aspects of outcome-orientated regulation and meta-regulation to ensure the activities of the GRNSW remain permeable and responsive to the public's attitudes and expectations regarding greyhound racing in the State.⁸ These recommendations will also ensure GRNSW achieve two of its three

⁴ Ibid s 25(4).

⁵ See *ibid* s 33.

⁶ Under *ibid* s 25(2)(a).

⁷ *Ibid* s 25(3).

⁸ See Christine Parker, *The Open Corporation: Effective Self-Regulation and Democracy* (Cambridge University Press, 2002) 268; Sharon Gilad, 'It Runs in the Family: Meta-Regulation and Its Siblings' (2010) 4(4) *Regulation and Governance* 485, 485–8; Cristie L Ford, 'New Governance, Compliance, and Principles-Based Securities Regulation' (2008) 45(1) *American Business Law Journal* 1, 9, 10–11, 22, 28; Cary Coglianese and David Lazer, 'Management-Based Regulation: Using Private Management to Achieve Public Goals' (2003) 37 *Law and Society Review* 691, 694, 695–6, 701; Peter J May, 'Regulatory Regimes and Accountability' (2007) 1(1) *Regulation & Governance* 8, 10; Stephen D Sugarman, 'Performance-Based Regulation: Enterprise Responsibility for Reducing Death, Injury, and Disease Caused by Consumer Products' (2009) 34(6) *Journal of Health Politics, Policy and Law* 1035, 1038; Neil Gunningham, 'Strategizing Compliance and Enforcement: Responsive Regulation and Beyond' in Christine Parker and Vibeke Lehmann Nielsen (eds), *Explaining Compliance: Business Responses to Regulation* (Edward Elgar, 2011) 199, 200, 212; Arie Freiberg, *The Tools of Regulation* (Federation Press, 2010) 33, 34.

principal objectives: 'to exhibit a sense of social responsibility by having regard to the welfare of greyhounds' and 'promote greyhound racing in the State as a competitive and *sustainable industry with a high level of public trust*'.⁹

4. Providing for the Welfare of Greyhounds

4.1. Use of Data to Better Provide for the Welfare of Greyhounds

- 4.1.1. The collection and reporting of data relating to the breeding, re-homing, injury, export and euthanasia rates is a crucial step in ensuring the activities of the NSW greyhound racing industry aligns with the attitudes and expectations of the NSW public.

4.2. Key Performance Indicators Required

- 4.2.1. To ensure GRNSWs activities align with public's expectations, targets or key performance indicators (KPI) must be set for those aspects of the industry that are of greatest public concern; in particular, breeding, re-homing, injury, export and euthanasia rates in greyhound racing.
- 4.2.2. The KPI for breeding, re-homing, injury, export and euthanasia rates should be based on empirical research conducted by the Commission.¹⁰
- 4.2.3. The use of KPIs to improve the regulation of animals in sport is not without precedent. Key performance indicators were adopted by Racing Victoria Ltd ('RVL') in January 2010 after (not unlike the situation with greyhound racing in NSW) a commitment to phase out hurdle racing and steeplechasing (colloquially referred to as 'jumps racing') was overturned.¹¹
- 4.2.4. To demonstrate how KPIs could be adopted in greyhound racing in NSW, the experience of the Victorian jumps racing industry may be instructive. For example, RVL introduced KPIs relating to the fatality rate (reducing the fatality rate by 50%) and fall rate (from 5% to 3% of starters).¹²
- 4.2.5. According to Ruse, Davison and Bridle, the introduction of the KPIs in the Victorian jumps racing industry resulted in a 'raft of measures to improve horse and rider safety' that 'had some success in reducing fatalities'.¹³

⁹ *Greyhound Racing Act 2017* (NSW) ss 23(b), (c) (emphasis added).

¹⁰ See 2.1 above.

¹¹ Karen Ruse, Aidan Davison and Kerry Bridle, 'Jump Horse Safety: Reconciling Public Debate and Australian Thoroughbred Jump Racing Data, 2012–2014' (2015) 5(4) *Animals* 1072, 1075.

¹² Racing Victoria Ltd, 'RVL Board Decision on Jumps Racing', *Racing Victoria News* (21 January 2010) <<https://www.racing.com/news/2010-01-21/jumps-racing-decision-january-21>>.

¹³ Ruse, Davison and Bridle (n 11) 1075, 1082.

- 4.2.6. It is the hope that by introducing KPIs relating to the breeding, re-homing, injury, export and euthanasia rates of greyhounds in NSW this would drive innovation within the industry to improve greyhound welfare and restore public trust in GRNSW.

5. Regulation of Greyhound Racing

5.1. Is the Registration Scheme Effective to Regulate Participants

- 5.1.1. Currently, s 42 of the Act requires all greyhounds to be registered by 12 weeks old.
- 5.1.2. It is recommended that the age greyhounds must be registered be reduced to 56 days to ensure young pups are not disposed of or euthanised before 12 weeks old (84 days).
- 5.1.3. The *Domestic Animals Act 2000* (ACT) s 14 requires all dogs to be registered after 56 days old. This is one of the earliest periods of dog registration in Australia.¹⁴ If based on expert evidence, it is possible to have an effective greyhound registration scheme before 56 days old then this age should be adopted to ensure all greyhound pups benefit from new initiatives, such as the Greyhound Re-Homing Policy.
- 5.1.4. Reducing the registration age will improve the Commission's oversight over every greyhound breed for greyhound racing and will help reduce the 'wastage' identified in the McHugh Inquiry.

Conclusion

The author welcomes the opportunity to expand upon this written submission.

¹⁴ See Royal Society for Prevention of Cruelty to Animals, 'Is It Mandatory to Register Domestic Dogs and Cats?', *RSPCA Knowledgebase* (Web Page, 15 May 2019) <<https://kb.rspca.org.au/knowledge-base/is-it-mandatory-to-register-domestic-dogs-and-cats/>>.