

INQUIRY INTO GREYHOUND WELFARE AND INTEGRITY COMMISSION

Organisation: Greyhound Racing New South Wales

Date Received: 16 September 2022

The Hon Robert Borsak MLC
Chair
Select Committee on the Greyhound Welfare and Integrity Commission
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Borsak,

Greyhound Racing New South Wales Supplementary Submission to the Select Committee on the Greyhound Welfare and Integrity Commission

We refer to the select committee (**the Committee**) established by the Legislative Council of the Parliament of New South Wales to inquire into and report on the Greyhound Welfare and Integrity Commission (**GWIC**) as the independent regulator of the greyhound industry in New South Wales.

Greyhound Racing New South Wales has previously put a submission to the committee on 4 December 2020. Due to understandable delays resulting from COVID-19, Greyhound Racing New South Wales is pleased to submit this supplementary submission to the committee.

IMPROVEMENTS IN WELFARE

1. Greyhound rehoming numbers are up 176% (from 729 in 2018-19 to what will be reported as 2014 in 2021-22) due to welfare program investments;
2. Catastrophic injuries are down 58% (from 1.2 per 1000 starts in 2018-19 to a soon to be reported 0.5 in 2021-22 per 1000 starts) due to track improvements;
3. Prizemoney and returns paid to participants is up 62.5% (from \$28.5m in 2018-19 to \$46.3m in 2021-22) due to business growth;
4. Breeding numbers are down 14% for the years spanning 2018-19 to 2021-22 (compared with the previous 4-year total across 2014-15 to 2017-18);
5. Wagering turnover is up 108% (from \$1.495b to \$3.11b) due to promotion and confidence in integrity;
6. Dogs whelped that go on to race has risen from 68% to 74% due to better education and practices.
7. These achievements are underpinned by GRNSW's financial operating performance: from a net loss of \$1.5 million in 2018-19 to three years of operating surplus, allowing record investment in welfare, rehoming, safety and prizemoney.

FAIRNESS FOR PARTICIPANTS AT PRESENTATION

8. Greyhounds Australasia is responsible for the national rules governing the greyhound racing industry.

9. These rules are adopted by all Australian and New Zealand greyhound jurisdictions; save for those provisions that conflict with respective state legislation (local rules).
10. The Greyhounds Australasia Rules (May 2022) in their application to the greyhound controlling bodies, clubs and participants requires (inter alia) that a greyhound presented for a race event must be free of prohibited substances. This is known as the 'presentation rule'.
11. In New South Wales this presentation rule is provided for in (inter alia) s141 of the NSW Greyhound Racing Rules.
12. The Greyhound Welfare Integrity Commission (GWIC) through the powers conferred upon it in the Greyhound Racing Act 2017 are responsible for the enforcement of this presentation rule.
13. Currently if a participant returns a positive result from a swab for a prohibited substance or at a level above an allowable threshold for a prohibited substance, they are charged under the 'presentation rule'. This is regardless of whether the participant has administered or wilfully exposed the greyhound to the substance that resulted in the positive test.
14. The effect of the presentation rule is to attribute a strict or absolute liability to the act of presenting a dog containing a prohibited substance. Such a breach is a reverse of the legal maxim, 'innocent until proven guilty'.
15. GRNSW is mindful that penalties and suspensions for participants have an effect on their mental well-being and importantly their families, community standing and livelihoods. Penalties that are incurred from breaches of this rule can result in a participant's suspension from all activities within the greyhound industry, causing significant emotional and financial stress.
16. Notwithstanding the availability of whole and or/or partial sentence suspension, minimum starting points for penalties attached to a breach of the presentation rule has the effect of creating a mandatory sentencing regime. [see tables below*]

Table 1: Category 1 Substances

MINIMUM STARTING POINT	
A reduction of 25% will be applied to the minimum starting point for an early guilty plea. Penalty will be increased by 50% where the substance is in Category 1A.	
First offence for any prohibited substance	2 year disqualification
One category 1 substance rule breach in previous 3 years	4 year disqualification
Second or subsequent category 1 substance rule breach in previous 5 years	6 year disqualification

Table 2: Category 2 Substances

MINIMUM STARTING POINT	
A reduction of 25% will be applied to the minimum starting point for an early guilty plea.	
First offence for any prohibited substance	4 month suspension
Note: A trainer who has been registered for more than 10 years without any breaches of rules relating to prohibited substances is eligible for a further 25% discount on the penalty for a first offence after entering an early guilty plea.	
One category 2 substance rule breach in previous 3 years	8 month suspension
Second or subsequent category 2 substance rule breach in previous 5 years	18 month disqualification

[extract] GWIC Penalty Guidelines July 2022

RECOMMENDATION

17. That the intersection of minimum penalty regimes with the presentation rule be revised to allow GWIC to take a participants' circumstances and evidence into account in the event of a positive swab result before charges are laid and/or a sanction applied.
18. There ought to be more scope for the application of a penalty that accords with the severity of the breach when measured against the individual circumstances of the participant. In other words, justice in all circumstances must prevail, and be seen to prevail.
19. Consideration ought to be given to a more flexible penalty framework. Minimum starting points that serve as a form of mandatory sentencing could be replaced with sentencing guidelines and/or maximum penalties.

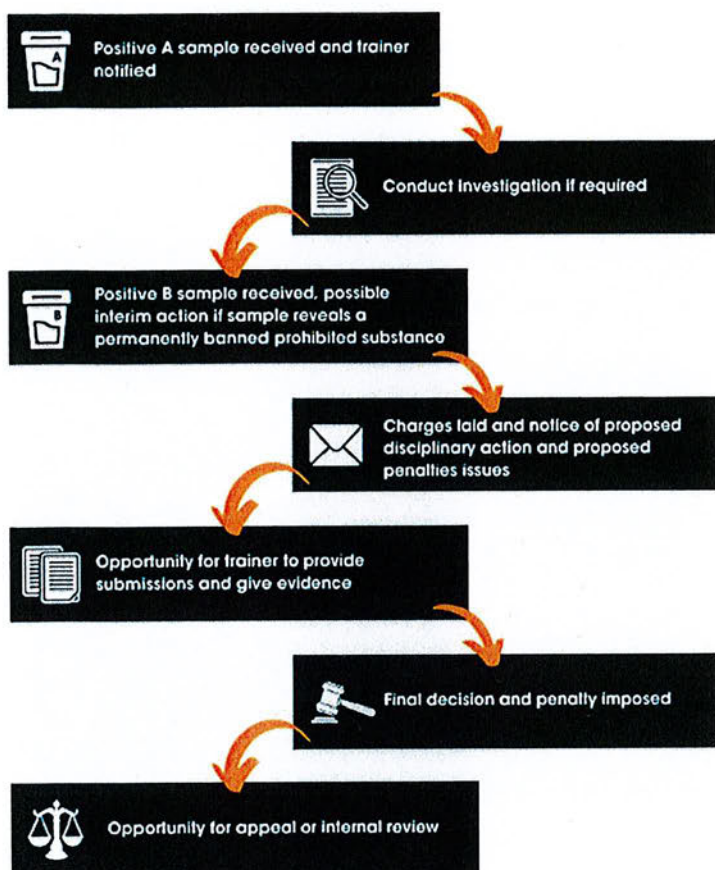
A New Way of Justice: NSW Greyhound Racing Tribunal

-Separating GWIC's Investigative, Charging and Adjudication functions

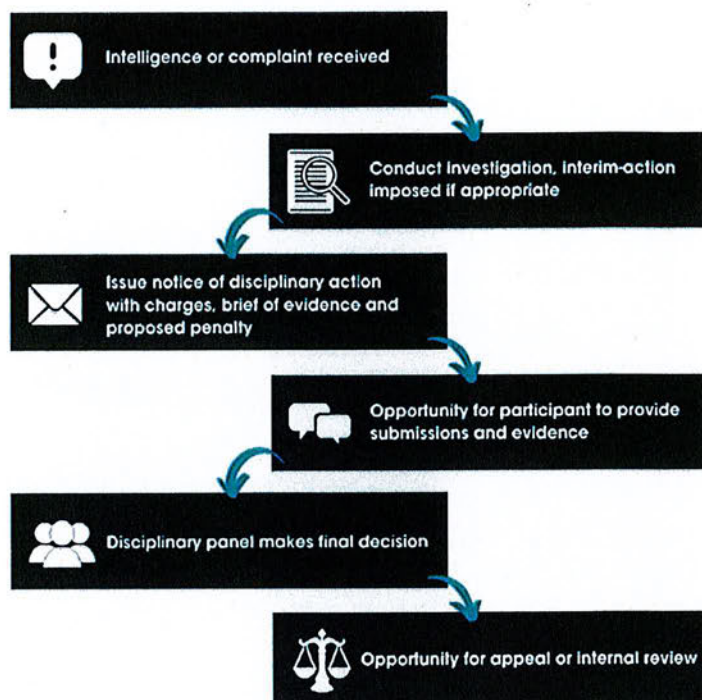
20. At present, GWIC exercises an investigative, prosecutorial, and sentencing function with respect to breaches by participants of the Greyhound Racing Rules and Code of Practice.
21. Many participants have voiced their unease with a situation whereby the investigative, decision making, and sentencing bodies are one and the same; GWIC is seen by participants as "judge, jury and executioner".
22. The existence of limitations on the breaches that may be appealed to the Racing Appeals Tribunal is of itself, a cause for concern and disquiet amongst participants.

Integrity / Disciplinary Processes

Prohibited substance matters



Conduct and other matters



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

23. In his submission to this Select Committee's Bathurst hearing on 28 May 2021, the late former GWIC Chief Commissioner Alan Brown responded to the limitations on appeals for some breaches:

"...If you are looking for suggestions about how things can improve, I would suggest there are a number of areas in that that we could provide to you that might be of assistance in improving at least a perception that the participants had every opportunity to be heard about a matter they are not satisfied with..."

24. GRNSW supports efforts to explore and facilitate a new way of justice for the Greyhound Industry in New South Wales.
25. Drawing on from other sporting codes such as the National Rugby League, Australian Rugby Union, and Racing Victoria there is the opportunity to investigate the merits of a Tribunal System to adjudicate on breaches of racing rules and the code of practice.
26. The tribunal system is commonplace in sport and may include a blend of magisterial

experience, participant experience, a representative(s) from GWIC and members of the wider (racing) community.

27. The Victorian Racing Tribunal is one example of a tribunal system. Commencing operations on 1 August 2019, it has sole responsibility for hearing and determining appeals, serious offence charges or matters referred to it by Harness Racing Victoria, Greyhound Racing Victoria and Victoria Racing, or their stewards.
28. The Tribunal consists of a Chairperson, three Deputy Chairpersons (all experienced judges or magistrates) and 13 general members being persons experienced in the industry or with legal qualifications. Hearings are generally heard in person in Melbourne, but during COVID have been heard via audio visual means. Proceedings are held with the usual informal requirements of a tribunal, although a formal hearing is required if a matter cannot be mediated. Legal representation is permitted.
29. Participants have also suggested a number of other alternative approaches to the administration of the racing rules. One such approach would see penalties able to be reviewed by a local court; with the attending process and procedural fairness found within the judicial system.
30. A divesting or transferring of GWIC's deliberative and penalty applying powers in relation to suspension/disqualification offences, would see it exist as an investigative and charging body only, with the adjudication role being given to a tribunal or local court. This could lead to a more transparent process, with justice being done *and* seen to be done for all parties involved.

RECOMMENDATION

31. GRNSW supports a review and reform of the disciplinary system currently administered by GWIC.
32. The GRNSW preferred model would be to adopt an independent 'tribunal system' constituted similar to those used by sporting codes such as the NRL, ARU and Racing Victoria. Such a tribunal would deliberate on breaches (of a particular level and above) brought by GWIC in the first instance.

We thank the committee for the opportunity to submit this supplementary submission and we would be pleased to answer any questions the Committee may have regarding GRNSW's submission.

Yours Sincerely.

Robert Macaulay
Chief Executive Officer
Greyhound Racing New South Wales