

Submission to:

**The Coordinating Officer
Greyhound Racing Act Review
OLGR
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Sydney NSW 20001
email: greyhound.review@olgr.nsw.gov.au**

re: Review of Greyhound Racing Act 2009



**From: NSW Greyhound Breeders, Owners and Trainers
Association,
PO Box 485, Glebe NSW 2037**

February 13, 2015

To:	The Coordinating Officer, Greyhound Racing Act Review, OLGR
From:	NSW Greyhound Breeders, Owners and Trainers Association (NSW GBOTA)
Contact:	Mr Brenton Scott Executive Officer NSW GBOTA PO Box 485 Glebe NSW 2037 Ph: 02 8587 1206 Email: brenton@gbota.com.au
Closing Date:	13 February 2015.

The NSW GBOTA welcomes this review and the opportunity to contribute to review of the Greyhound Racing Act 2009. The Greyhound Racing Act (in current and future form) impacts greatly on the racing operations of the NSW GBOTA and its members who believe that it is the cornerstone to ensuring appropriate and fair commercial management and regulation of the Industry.

Our submission suggests modifications to the Greyhound Racing Act 2009 in a number of areas, including Board composition, accountability and integrity procedures.

The NSW GBOTA notes that review will be finalised and a report tabled before Parliament by May 2015. The NSW GBOTA would welcome further consultation opportunities as the view and arising report are finalised.

Overview of our organisation - NSW Greyhound Breeders, Owners and Trainers Association (NSW GBOTA)

The NSW GBOTA is Australia's largest Greyhound Racing organisation. It has racing operations at the following venues:

- Wentworth Park (104 Metropolitan TAB meetings, 26 TAB meetings)
- Gosford (52 TAB meetings)
- Maitland (50 TAB meetings)
- Lismore (52 TAB meetings)
- Bulli (52 TAB meetings)
- Bathurst (52 TAB meetings)
- Appin (self funded non-TAB meetings as finances permit)
- Temora (24 non-TAB meetings)
- Gunnedah (24 non-TAB meetings)

The following NSW greyhound racing clubs are also affiliated with the NSW GBOTA.

The Affiliation relationships are based on the fact that the NSW GBOTA and its affiliates seek to foster the development of greyhound racing co-operatively and with industry outcomes in mind.

- Broken Hill GRC
- Goulburn GRC
- Grafton GRC
- Hastings River GRC
- Kempsey GRC
- Moree GRC
- Muswellbrook GRC
- Shoalhaven GRC

In addition to its racing function, the NSW GBOTA is also an organised representative group on behalf of owners, trainers and breeders. The Association currently has just under 1200

members and 28 Branches throughout NSW. The Branches meet on a monthly basis and promote suggestions via the Directorate. The NSW GBOTA believes this process enables it to represent the position of average participants accurately and effectively.

The NSW GBOTA Directorate comprises 10 members, all of whom are elected for two year terms by members.

The NSW GBOTA is represented on a number of State and National bodies as follows:

- Australian Greyhound Racing Association (NSW GBOTA Chairman is currently the AGRA Deputy Chairman)
- Australian Federation of Greyhound Breeder Owner Trainer Associations
- Metropolitan & Provincial Greyhound Racing Clubs Association
- Greyhound Racing Clubs Association
- Greyhound Media Services
- Greyhound Racing Industry Consultative Group

Our submission approach

The NSW GBOTA has contributed to reviews of the Greyhound Racing Act 2002 and the Greyhound Racing Act 2009. Our consistent position has been to make suggestions that aim to ensure that the controlling authority is able to make appropriate and fair commercial and regulatory decision and further that it able to be held to account from both performance and integrity levels.

In writing this submission we make reference to a number of reports and past submissions as follows. Copies of these reports and submission have not been provided but are available on the NSW GBOTA web-site or are on public record:

- Finding and recommendations of the Select Committee re: The Parliamentary Inquiry into the Greyhound Industry 2014 (on public record)
- NSW Government Response to the Select Committee on Greyhound Racing in NSW First Report 2014 (on public record)

- Thoroughbred Racing Act (on public record)
- Greyhound Racing Act (on public record)
- NSW GBOTA submission response to the Scott Integrity Review and Five Year Review of the Greyhound Racing Act 2002

OLGR commentary

For the purposes of this discussion paper, the objectives of the Act may therefore be broadly categorised as follows:

- *To provide a statutory governance framework for the sustainable economic development and future viability of the greyhound racing industry.*
- *To provide a statutory framework for the integrity of the conduct of greyhound racing and associated wagering on greyhound racing.*
- *To give greater autonomy to the greyhound racing industry in relation to both commercial and regulatory decision making.*

The Review invites comment on whether these policy objectives are, or remain, valid. The following questions (among the others raised below) might be considered by submission makers in addressing this issue:

OLGR associated questions and NSW GBOTA response

Q1. Is there a need for legislation to provide for the sustainable economic development and future viability of the greyhound racing industry?

The NSW GBOTA supports the need for legislation and the notion that the legislation should seek to provide for sustainable economic development and future viability for the greyhound racing industry. The shape and form of any such economic development and viability blueprint is a responsibility of the Board of Greyhound Racing NSW (GRNSW).

Given this, the NSW GBOTA supports a GRNSW Board composition that blends independence and stakeholder representation. Specific recommendations of the NSW GBOTA are made or referred to in answers to questions 15 to 22. Consistent with submissions made in 2008, the NSW GBOTA believes that the best commercial and regulatory decisions are made by a Board that has (a) a blend of skills based appointments and stakeholder nominee appointments and (b) is supported by an appropriately empowered advisory body such as GRICG and (c) consults appropriately with stakeholders.

Q2. Are the current controlling body arrangements appropriate for ensuring the integrity of greyhound racing in this State?

The NSW GBOTA believes that they can be enhanced from Board composition, accountability and integrity assurance perspectives. The issue of board composition is commented to in questions 15 to 22. The issue of accountability is dealt with in questions 25 to 28. The issue of integrity is dealt with to some degree in questions 15 to 22, 25 to 28 and specifically in questions 29 to 33.

Q3. Is it appropriate for the one body to be responsible for both the commercial and regulatory functions for the industry?

The NSW GBOTA believes that, contingent on the Greyhound Racing Act 2009 being reviewed appropriately amended from Board composition, accountability and integrity

perspectives, it is appropriate for the one body to be responsible for both the commercial and regulatory functions of the industry on both effectiveness and cost efficiency grounds.

Q4. Should the industry be deregulated and permitted to formulate its own governance and economic arrangements?

The NSW GBOTA believes the Greyhound Racing Act 2009 sufficiently deregulates the industry and gives it sufficient autonomy over governance and economic decisions. However, it is important that there are accountability controls over commercial performance, integrity procedures and corruption risk. The NSW GBOTA believes that these controls can be realised via amended Board structure and appointment processes, increased industry consultation and integrity improvements proposed later in this submission.

OLGR commentary

Historically, the NSW racing industry has expressly sought and been granted autonomy so that it can manage its affairs free from government intervention. The independent controlling body model is common to all three codes of racing in this State.

It is noted that the 2008 Five Year review of the Greyhound Racing Act 2002 and Harness Racing Act 2002 found that there was a strengthening of the recognition that the racing industry should manage its affairs independently of government, particularly as it is largely self-funding.

This is not to say that GRNSW is immune from scrutiny. As noted below, GRNSW is required by the Act to provide an annual report to the Minister on its activities and its financial statements. This report must be tabled in both Houses of Parliament.

In addition, any person aggrieved by a decision of GRNSW, stewards of GRNSW or of a greyhound racing club may appeal to the independent Racing Appeals Tribunal. The Tribunal is a qualified person appointed by the Minister for Hospitality, Gaming and Racing on the recommendation of the Attorney General.

The Act also provides for the appointment of a Greyhound Racing Integrity Auditor who is responsible for receiving and investigating complaints about the conduct of racing officials in relation to their responsibilities and obligations under the legislation. The effectiveness of the legislation with respect to the role and functions of the Integrity Auditor is discussed further at point 6.2 below.

OLGR associated questions and NSW GBOTA response

Q5. Is it appropriate that the controlling body is independent of government control or direction in the exercise of its powers and functions?

The NSW GBOTA supports the notion that the controlling body should be relatively free of government control however this is subject to appropriate accountability and performance controls. The current controls are not seen as sufficiently robust.

GRNSW is required to submit its annual report to both Houses of Parliament. This, however, does not ensure any particular level of government oversight, monitoring or review of commercial and strategy decisions made by GRNSW. GRNSW should be required to present a one to five year strategy, its annual budget and any substantial objectives annually to the Greyhound Racing Industry Consultative Group for evaluation and comment and to some degree endorsement. In turn, this information should be presented to the Minister for Racing and industry stakeholders with appropriate supplementary information. The Minister should be able to hold GRNSW to account with regard to strategy, objectives and budget compliance. In circumstances where-by the Minister is satisfied that performance criteria has not been met without justifiable reason or reasons, then provision should exist within the legislation which provide for the Minister to remove the Board.

With regard to regulatory and integrity oversight, the NSW GBOTA appreciates that the Greyhound Racing Act 2009 provides for a Greyhound Racing Integrity Auditor but the powers of this position do not seem to be as robust as the powers and accountability requirements that exist in Victoria where-by a three code Racing Integrity Commissioner is in place. The NSW GBOTA submission further addresses this issue in questions 29 to 33. However, it is important to stress here that the Racing Integrity Commissioner would (as is currently in place in Victoria) undertake an annual review of regulatory and integrity processes and systems and would be empowered to present unsatisfactory findings to the Minister arising from any of these reports or any other matters inquired into. In circumstances where findings placed before the Minister by the Racing Integrity Commissioner were of such significance and indicated that the Board of GRNSW's regulatory and integrity activities or oversight were not satisfactory (without acceptable reason), then provision should exist within the legislation which provide for the Minister to remove the Board.

The NSW GBOTA notes that the Minister's power under the Greyhound Racing Act 2009 is restricted to removing individual members and then, only on the recommendation of GRNSW. The NSW GBOTA further notes that the Minister has wider powers to remove members under the Thoroughbred Racing Act. In conclusion, the NSW GBOTA believes that the Minister should have the power to remove an individual member where Code of Conduct or Conflict of Interests breaches of substance are evident and proven. Further, the Minister should also have the power to remove the Board where performance (compared against strategy and financial plans) is unsatisfactory and clearly evident and proven or there are Integrity breaches of substance that are proven. The removal of the a Board member or the Board would only occur after the Minister has first given the member or the Board an opportunity to show cause why the member or the Board should not be removed from office.

Q6. In what form and to what extent, if at all, should there be government oversight of the controlling body?

Consistent with the information provided in the answer to question 5, auditing of regulatory and integrity functions so as to ensure appropriate processes and systems (via a Racing Integrity Commissioner) review mechanisms over strategic and financial performance.

In addition, the Government must continue to have ongoing review mechanisms to ensure that legislation remains relative to the objectives it has for the greyhound racing code.

The NSW GBOTA also notes the Legislative Council Parliamentary Inquiry recommended that the NSW government consider amending the Independent Commission Against

Corruption Act 1988 so that the racing industry was brought within the jurisdiction of the Independent Commission Against Corruption. This recommendation subsequently received the in principle support of government. The NSW GBOTA supports the recommendation and believes that it would bring about another appropriate point of account.

OLGR commentary

The three racing controlling bodies in NSW (i.e. GRNSW, Racing NSW and Harness Racing NSW) were established with almost identical functions under their respective legislation.

While the three racing codes have their unique circumstances, they share the need for a governance structure that provides for the sustainable economic development and future viability of the racing industry, and which ensures the integrity of and public interest in, the conduct of racing and associated wagering.

The 2008 reform of the Thoroughbred Racing Act 1996 was undertaken to introduce best practice and modern structures to the governance arrangements for the NSW thoroughbred racing industry. The centrepiece of the arrangements is an independent controlling board selected on merit using skills based criteria. It was considered that this approach was appropriate to provide for leadership to manage the future development and viability of the industry and provide for effective regulation of the industry.

In his 2008 review, Malcolm Scott reported that he could not find a reason that “supports any recommendation to change the current combination of both commercial and regulatory responsibilities within the single organisation, Racing New South Wales.”

In its response to the Malcolm Scott report the then government expressed the view that the Racing NSW arrangements were considered as an appropriate model for all three codes of racing.

The 2008 Five Year review of the Greyhound Racing Act 2002 and Harness Racing Act 2002 was of the opinion that an independent board structure provides a suitable basis to assume responsibility for both regulatory and commercial governance responsibilities. In its response to the Five Year Review (tabled in December 2008) the then government noted that as a matter of principle, separate controlling bodies for the ‘commercial’ and ‘regulatory’ functions do not necessarily enhance the achievement of best practice and that, as a general rule, Australian racing jurisdictions prefer a single industry board approach.

Notwithstanding this, the question remains as to whether this duality of purpose is appropriate and serves the best interests of the industry. It is timely to revisit the question of whether a racing controlling body can objectively and effectively undertake the responsibilities as the regulator of the industry, while at the same time dedicate itself to the promotion and economic development of the industry as a whole.

This is a threshold question which has flow on effects when considering the composition of GRNSW which is discussed further at point 4.3 below.

OLGR associated questions and NSW GBOTA response

Q7. Is it appropriate that the one body should be responsible for both the regulatory and commercial functions for the industry?

Refer to answer provided to question 3.

Q8. If the current arrangements for the control of the regulatory and commercial functions for the industry were to be changed, in what manner should they be amended and what form should they take?

Refer to answers provided in questions 5 and 6.

Q9. Is there a case for the NSW greyhound racing industry to be regulated and controlled in a manner unlike the other two codes of racing?

The NSW GBOTA does not have a position on the regulation or controls that might apply in other codes. The NSW GBOTA supports the current level of de-regulation in the Greyhound Racing Act 2009, subject to amendments to Board composition and appointment processes and accountability and integrity processes suggested in various answers in this submission.

Q10. If so, what would that model look like?

Refer to answer in question 9.

OLGR commentary

The above powers place beyond doubt GRNSW's legal right to undertake certain actions in the performance of its regulatory and commercial functions. If the current governance structure for the industry was to undergo significant reform, for example if the regulatory and commercial functions for the industry were to be vested in separate bodies or if the industry was to be deregulated by government, in the interests of good governance there would remain a need to prescribe the powers of that body or bodies, whether by legislation or in the constitution and articles of association or code of the controlling body.

Q11. Are the powers prescribed by section 10 of the Act sufficient for the controlling body to perform its regulatory and commercial functions?

The NSW GBOTA does not support this separation of regulatory and commercial functions and accordingly provides no response, at this point, to prescribed powers that might exist should the functions be separated. The NSW GBOTA believes that the current powers are entirely sufficient for the controlling body to perform its regulatory and commercial functions.

Q12. What additional powers should be prescribed by the Act, if any?

The NSW GBOTA does not support the provision of additional powers.

Q13. What powers do you consider to be unnecessarily prescribed by the Act, if any?

The NSW GBOTA believes that the legislation should outline circumstances in which the controlling body is able to exercise the power which provides for it to *appoint an administrator to conduct the affairs of a greyhound racing club* (Section 10 (2) (e), Greyhound Racing Act 2009). Given the significance of this power, an outline of the circumstances and the process should be outlined in the legislation.

In addition, the NSW GBOTA holds concerns as to GRNSW being able to own greyhound racetrack land and facilities and the conflict this potentially places GRNSW in with its overriding obligations under the Greyhound Racing Act 2009 to not conduct greyhound racing and further, to be impartial and fair to all greyhound racing clubs.

The Greyhound Racing Act 2009 currently states that *nothing in this Act confers on GRNSW power to conduct greyhound race meetings on its own behalf* (Section 10 (3)). The Act also provides for GRNSW *to acquire, hold, take or lease and dispose of real and personal property whether in its own right or as trustee* (Section 10(2)(l)).

GRNSW, during the operational effect of the Greyhound Racing Act 2009, acquired 50% and ultimately 100% of a registered greyhound racetrack at Birmingham Gardens, NSW, known as The Gardens and previously owned by the National Coursing Association (NCA). This makes GRNSW a landlord for the club operating from that venue. Does this not put GRNSW in conflict with its impartiality obligations to all NSW greyhound racing clubs when it comes to making decisions under its powers and functions with regard to race date allocations, club registrations, capital funding, prizemoney allocations, club administration funding etc?

If nothing else, there is a perception that GRNSW may possibly take decisions that favour the club operating out of a venue that GRNSW itself owns. In addition, the club conducting operations out of a venue owned by GRNSW has its tenure and operating rights determined by GRNSW, receives race dates and funding from GRNSW. This, for all intents and purposes, creates an impression that the racing operation at the track owned by GRNSW is a racing operation conducted by GRNSW.

Ultimately, the NSW GBOTA does not believe that GRNSW should be permitted by legislation to own greyhound racetrack land, facilities or other assets on such tracks and rather that the legislation should preclude acquisition rights. Further, the legislation that precludes GRNSW from conducting greyhound racing should be strengthened.

Q14. Should some or all of these powers be vested in a body or bodies other than GRNSW?

The NSW GBOTA supports, excepting viewpoints outlined in the answer provided to question 13, the powers outlined in Section 10 of the Greyhound Racing Act 2009 remaining with GRNSW, so long as the NSW GBOTA proposals regarding Board composition, accountability and integrity are simultaneously supported. Should the NSW GBOTA suggestions regarding Board composition, accountability and integrity be not supported, then the NSW GBOTA would seek the right to contribute further to the consultation process with

regard to possible vesting of some powers in alternative bodies and increasing the significance of the role of GRICG.

OLGR commentary

On 27 March 2014 the report of a special purpose review undertaken by the OLGR of the appointment process for GRNSW and HRNSW was tabled in Parliament. The review recommended enhancements that included strengthening the eligibility and disclosure of interest requirements in the legislation. Specifically, the review recommended that the appointments process arrangements for GRNSW and Harness Racing NSW should be altered to:

(a) provide for the Minister to appoint five members of the controlling body based on selections made from lists of persons recommended for appointment that have been provided to the Minister by a specially established selection panel,

(b) provide that the Minister must select persons to fill casual vacancies in the membership of the controlling body from lists of persons recommended for appointment provided by the controlling body,

(c) provide that a person is not eligible to be appointed as a member of the controlling body if the person is currently, or during the previous 12 months has been, either an employee or member of a governing body of a race club, racing association or eligible industry body,

(d) provide that the selection panel cannot include a person in a list of persons recommended for appointment as members of the controlling body if the panel is satisfied that a relevant pecuniary conflict of interest will result,

(e) provide for the Chairperson and Deputy Chairperson of the controlling body to be appointed by the Minister based on selections made from a list of persons recommended for appointment provided by the selection panel.

In addition, the review recommended that members of the controlling body should not participate in the making of decisions in which they have a pecuniary conflict of interest and provision should be made to enable the Minister to remove a member who participates in the making of a decision where he or she has such a conflict of interest or has a relevant continuing conflict of interest. In effect, the implementation of these recommendations would bring the requirements for membership of GRNSW and HRNSW into line with that of Racing NSW.

The report of the five year statutory review of the Thoroughbred Racing Act 1996, tabled in the NSW Parliament on 6 August 2014, also recommended that consideration be given to aligning the appointment processes of Racing NSW, HRNSW and GRNSW.

This review also noted that the provisions in the Thoroughbred Racing Act 1996 dealing with conflicts of interest at the time of (and arising after) appointment of members of Racing NSW were strengthened in 2011. The review report recommended that it would, as a matter of good governance, be appropriate for similar strengthening of the conflict of interest provisions in relation to the Acts that establish GRNSW and HRNSW.

The shift to an independent board model for GRNSW and HRNSW in 2009 was considered best practice at that time. This reform was aimed at removing questions around a representative member's ability to manage real and perceived conflicts of interest between their duty to the board and to the NSW greyhound industry as a whole, as opposed to the interests of the stakeholder group or race club by whom they were nominated/elected for appointment.

The recent reviews build on that policy position and recommend strengthening the eligibility and conflict of interest provisions of the Act.

The government has also noted the criticisms submitted to the recent Legislative Council Select Committee on Greyhound Racing in NSW by certain stakeholders regarding both the structure of the board of GRNSW and the selection/appointment process. It is acknowledged that there remains a diversity of opinion among greyhound racing industry stakeholders regarding the merits of the 'independent' board model, with some support for the inclusion of stakeholder and/or race club nominees on the board.

Regardless, it is clear that there is a desire to ensure that members of GRNSW not only have the skills and experience required for membership, but are also appropriate to enhance the performance of the functions of the controlling body.

The selection panel would be expected to give due regard to a person's suitability for the role as a member of GRNSW and whether they would be committed to the functions of the controlling body as set out in the Act. However, a method of ensuring that there are strong appointments would be the inclusion in the Act of a requirement that the selection panel must give consideration to whether a proposed appointee's skills and experience align with the functions of the controlling body.

The role of the selection panel is paramount in ensuring that the industry is provided with strong leadership. Under the present arrangements, the Minister is to establish the selection panel. There is no impediment to the Minister appointing a greyhound racing industry participant or stakeholder representative as a member of the selection panel.

A way in which to address concerns that industry stakeholders have little input into the composition of GRNSW might be amendments to the Act to provide that selection panel must include an industry participant or stakeholder representative. Under such an arrangement the Greyhound Racing Industry Consultation Group (GRICG) could be given the responsibility of nominating the industry stakeholder representative on the selection panel. Alternatively, the Act could provide that the Chairperson of GRICG is to be a member of the selection panel. This issue is further discussed at point 5.1 below.

OLGR associated questions and NSW GBOTA response

Q15. Is the composition of GRNSW as provided for by the Act appropriate for the effective regulation of the NSW greyhound racing industry?

The NSW GBOTA holds the view that appropriate regulation of the industry can only be achieved via a Board composition that has greyhound industry representation. Good

regulation requires an understanding of the everyday impact of decisions on stakeholders, in particular the racing providers (clubs) and the product suppliers (participants). The NSW GBOTA proposed in its 2008 submission review of the Greyhound Racing Act 2002 that a Board comprising Independent appointments and stakeholder nominees was the preferred model.

Of the submissions received, the vast majority, according to a summary of recommendations prepared by the Office of Liquor, Gaming and racing favoured “retaining the existing arrangements (including stakeholder representation) and adding more independent members”.

Simultaneous with the Five Year Review of the Greyhound Racing Act 2002, the Scott Integrity Review was prepared and, whilst recommending an expansion to the functions of GRNSW, it did not support or suggest the need to change the composition of the Board of GRNSW.

The Board composition outlined in the Greyhound Racing Act 2009, accordingly, was implemented despite it being against the majority of recommendations presented to the Review of the Act and without it being a recommendation of the Scott Integrity review. As stated in the OLGR commentary, the Board composition in the Greyhound Racing Act 2009 was supported on the basis that the government viewed it as best practice at the time and that it *“removed questions around a representative member’s ability to manage real and perceived conflicts of interest between their duty to the board and to the NSW greyhound industry as a whole, as opposed to the interests of the stakeholder group or race club by whom they were nominated/elected for appointment”*.

However, there is little doubt that any benefits associated with the total independent composition have been offset by a Board that has appeared at times to lack industry insight, has communicated with stakeholders poorly and has made decisions with consultation procedures that have been widely criticised.

Recommendations arising from the Legislative Council Parliamentary Inquiry into Greyhound Racing in New South Wales include the need for improved consultation with stakeholders and the need for stakeholder representation on the Board of GRNSW. In addition, the Inquiry chairman, the Honourable Robert Borsak, commented to the commercial management of GRNSW in the following manner: “The without a restructure of the board and management of the industry, the financial assistance and reforms recommended will be of little benefit.”

It is clear that industry stakeholder consultation and expenditure control during 2002 and 2009 was superior to that has applied under the current Board of GRNSW. The NSW GBOTA believes this outcome is related to the Board shifting from a Board with stakeholder representation to one of totally independent structure.

The reality seems to be that neither a totally independent Board composition nor a totally stakeholder based composition are acceptable. The opportunity to blend skills based independent appointments and stakeholder nominee appointments (with the latter bringing valuable industry knowledge and insight to the decision making process of GRNSW) should be seized a primary outcome of the current review.

Q16. Is the composition of GRNSW as provided for by the Act appropriate for guiding the economic growth and future sustainability of the NSW greyhound racing industry?

No. The NSW GBOTA holds the view that it is simply incomprehensible that the major stakeholders of the NSW greyhound industry currently have no direct input to substantial strategic and commercial decisions taken by GRNSW despite the fact that these decisions drive the future viability of the various stakeholders.

The NSW GBOTA believes that the inclusion of stakeholder nominees on the Board would assist the Board of GRNSW to understand industry culture, add to industry insight and, ultimately, positively contribute to the quality of strategic, commercial and regulatory decisions.

Recommendations arising from the Legislative Council Parliamentary Inquiry were contained in two reports. In September 2014, the Government responded to the first report and committed to a closer examination of the structure of GRNSW and whether its composition is conducive to stakeholder consultation and participation in the formulation of policy.

The response further commented as follows:

“The Government notes the criticisms submitted to the Committee by certain stakeholders regarding both the structure of the board of GRNSW and the selection/appointment process. There clearly remains a diversity of opinion among greyhound racing stakeholders regarding the merits of the ‘independent’ board model, with some support for the inclusion of stakeholder and/or race club nominees on the board.”

It is against this background that the NSW GBOTA suggests the following Board composition should apply in future legislation:

- Chairman – Ministerial appointment
- Three independent appointments (professional skills across legal, financial, business and marketing, regulatory administration or enforcement disciplines) – Selection panel appointments
- One nominee of the club conducting NSW metropolitan greyhound racing
- One nominee of the clubs conducting other NSW greyhound racing
- One nominee of registered NSW greyhound racing participants elected by ballot of all registered NSW greyhound racing participants.

Benefits and strengths associated with this composition are as follows:

- (a) The Chairman is a Ministerial appointment recruited and selected for a specific role. This compares to the current situation where-by Board applicants apply for a Board member role and then elect a chairman from the appointed Board members, who may or may not have held chairmanship aspirations or qualities at the time of Board member application.
- (b) The independent Board appointments would ensure an appropriate cross section of professional skills.
- (c) The stakeholder nominee appointments would provide an appropriate representation for the major stakeholders, that is clubs conducting greyhound racing and participants providing the supply of greyhounds.

Q17. Is the composition of GRNSW conducive to effective consultation and communication with industry stakeholders?

No. The NSW GBOTA believes that there is a direct correlation between the commitment to effective and meaningful industry consultation and Boards comprising stakeholder representation. The feedback provided to the Legislative Council Parliamentary Inquiry and arising recommendations support this observation.

Q18. Are the selection criteria set out in the Act (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) sufficient for appointment as a member of GRNSW?

The NSW GBOTA supports the criteria applying for the independent nominees but again reiterates the need for greyhound racing industry insight and understanding to be added to the Board member knowledge base via stakeholder nominee Board member representation.

Q19. What other attributes should a member of GRNSW possess?

The NSW GBOTA believes it would be desirable if the independent Board members appointed via the selection panel process had experience on Industry based Boards, in particular participant based industries.

Q20. Are the eligibility requirements for appointment as required by the Act too rigid? If so what changes might be appropriate and to what aim?

The NSW GBOTA is generally supportive of current Act eligibility requirements for Board members continuing to apply for independent appointments in the event that legislation is changed to provide for both independent appointments and stakeholder nominee appointments. With regard to stakeholder nominee appointments, the NSW GBOTA would again be generally happy with the current Act eligibility requirements applying with the exception of the restriction applied to persons registered with GRNSW. Clearly stakeholder nominee appointments should be able to remain registered with GRNSW and able to continue in the participation of greyhound racing.

A further unnecessary requirement would appear to be the eight year restriction. This restriction is seemingly based on the premise that a member is unable to further contribute after eight years (continuous or stagnated) and yet the same member may have a knowledge base, skills set and a performance record that suggests there would be considerable benefit in retaining the Member. The driving eligibility requirement should be merit and previous term experience is not an issue that should restrict a member from application under a merit based selection process or a stakeholder nominee process.

In the event that legislation is not changed so as to provide for a mix of independent appointments and stakeholder nominee appointments, and Board composition remains as in the Greyhound Racing Act 2009, then the eligibility requirements are seen as too rigid with regard to persons registered with GRNSW being not eligible for appointment. In a scenario where-by an applicant meets the skills criteria and is determined by the Selection Panel to be

the superior applicant, it should not be an issue if the person is registered with GRNSW and participates in the industry. In fact, the NSW GBOTA would see this outcome as desirable in terms of the member's capacity to contribute to decision making.

Q21. Should the Act require that there be an industry stakeholder representative on the selection panel? If so, by what method would that person be appointed to the selection panel?

The NSW GBOTA supports legislation having provision for stakeholder representation on the selection panel. Appointment to be a decision for the Minister, based on a publicised expressions of interest process. The stakeholder representative expression of interest should be open to Club Director/Committee members or licensed participants. The selected person would be required to outline their credentials and demonstrate their capacity to contribute to the Selection Panel in the expression of interest process.

Q22. Should the Minister be involved in the appointment process?

The NSW GBOTA supports the Minister appointing the chairman via a process determined by the Minister. The NSW GBOTA also believes it appropriate that the Minister continue to appoint the Selection Panel which selects the independent appointments.

In its response to Question 21, the NSW GBOTA supported the inclusion of a stakeholder representative. In addition, it would seem essential that at least one member of the selection panel had human resource qualifications and recruitment experience.

Q23. What other process or method might be appropriate for selecting/appointing members for GRNSW?

The NSW GBOTA supports the Selection Panel process. The composition of the Section Panel should include a Human Resource Management expert, with experience and a proven record in executive placement and recruitment.

Q24. Should the conflict of interest provisions be strengthened? If so how would this sit with any change towards having 'representative' members appointed and/or elected?

The NSW GBOTA believes that the current conflict of interest provisions are adequate so long as they are diligently applied and supported by a robust code of conduct. An issue that needs to be considered between the Conflict of Interest requirements and Code of Conduct requirements are relationships with wagering operators, given the increase level of business activity between the operators and controlling bodies.

OLGR commentary

Discussion As mentioned in 4.3 above, there is no impediment to the Minister appointing a greyhound racing industry participant or stakeholder representative as a member of the selection panel which recommends the appointment of members to GRNSW.

Under the current eligibility requirements for membership of GRICG (clause (a) above), if the Minister was to appoint a member of the consultation group to sit on the selection panel,

that person would be required to relinquish their role with GRICG during the time they are a member of the selection panel.

It is considered this is an unnecessary imposition and not conducive to effective industry participant and stakeholder engagement in the selection process for GRNSW.

It is proposed that a recommendation of the Review will be to remove clause (a) from the eligibility requirements for membership of GRICG.

5.2 Greyhound Racing NSW Strategic Plan *Section 12 of the Act requires that GRNSW is to prepare a strategic plan at least every three years and that the strategic plan must be prepared in consultation with GRICG and other greyhound racing industry stakeholders.*

Discussion *The Government has noted the concerns expressed by industry participants to the Legislative Council Select Committee that GRNSW does not effectively communicate its decisions or engage in consultation. The lack of a structured approach to stakeholder consultation by GRNSW in the past has no doubt contributed to this perception.*

GRNSW has since committed to staging scheduled, regular and effective consultation with industry stakeholders across NSW. This will include:

- *half yearly 'Chairperson and CEO meetings of all TAB Clubs and GRNSW executive;*
- *half yearly TAB Club seminars;*
- *yearly meeting of the Greyhound Racing NSW Board with the Greyhound Racing Clubs Association;*
- *quarterly Racing Planning & Programming meetings;*
- *half yearly meetings of the Greyhound Racing NSW Board with the GRICG, with the Chief Executive or Chairperson to meet with GRICG bi-monthly;*
- *three regionally held GRNSW Board meetings and regional consultation meetings open to participants per year based on the Government's community cabinet model.*

In addition GRNSW has undertaken to maintain regular consultation with industry stakeholders on specific policy and operational matters as and when they arise.

GRNSW contends that the above program will improve the efficacy of its consultation program by providing a formal and transparent consultation schedule. This will enable stakeholders to contribute to key policy and strategy issues.

The implementation of GRNSW's proposed program will be monitored by the government and GRNSW will be expected to provide a report to the government on the implementation and effectiveness of its reforms within 12 months.

OLGR associated questions and NSW GBOTA response

Q25. Are the terms of the Act which require GRNSW to undertake consultation with greyhound racing industry stakeholders sufficient?

The NSW GBOTA would strongly contest their adequacy, given that the current commitment to communication only arose as a result of criticism arising during the Legislative Council Parliamentary Inquiry and, seemingly, the government intervention in seeking a commitment to consultation procedures. They were not procedures put in place by GRNSW as a recognised responsibility under the Act, prior to the Parliamentary Inquiry or the government's intervention, despite pleas from industry stakeholders.

The NSW GBOTA notes and applauds the Government's decision to monitor the consultation procedures undertaken by GRNSW over a 12 month period but this action, in itself, further emphasises the fact that the provisions within the Greyhound Racing Act 2009, in isolation, do not ensure that GRNSW will consult to a predictable and appropriate level.

Q26. Is the composition of GRICG and the requirements for meetings with GRNSW as set out in the Act conducive to proper industry stakeholder consultation?

The NSW GBOTA supports the current composition as it applies to nominees of race clubs, that as provided by Section 33 (1) a, b and c. The remaining positions on GRICG (up to three) come from nominations of different eligible industry bodies. The eligible recognised industry bodies are defined by the Minister for Racing from time to time.

The NSW GBOTA would propose that, given its membership size, its organised Branch and District Association structure and its stability since incorporation in 1939, it should be granted an up-front right to nominate a membership representative on GRICG so long as it remains properly constituted and maintains annual membership renewals of 800 members.

The NSW GBOTA would support the same up-front right being granted to any other participant representation group should it have a proper constitution and membership level in place.

Given this, the NSW GBOTA would propose that the composition of GRICG should be defined in the Act as follows:

- One person nominated by the club funded by GRNSW as the metropolitan club,
- One person nominated by the clubs funded by GRNSW as TAB clubs,
- One person nominated by clubs funded by GRNSW as non TAB clubs,
- One person nominated from the membership of NSW Greyhound Breeders Owners and Trainers Association, conditional on the Association being properly constituted and maintaining annual membership renewals in excess of 800 members.
- Up to two persons nominated by eligible industry bodies as determined from time to time by the Minister.*

*(*The NSW GBOTA notes that the Registered Participants Greyhound Association is currently recognised as and Eligible Industry Body and would support continuation of this determination)*

The NSW GBOTA notes that the Greyhound Racing Act 2009 does not clarify the term for GRICG appointments. This should be clarified and the NSW GBOTA would suggest that the term should be two years.

The NSW GBOTA notes that currently members of GRICG do not receive any remuneration and the positions are honorary. The NSW GBOTA would propose, however, that the positions being remunerated in a modest manner, as determined by GRNSW in consultation with the Statutory and Other Offices Remuneration Tribunal. In forming this view, the NSW GBOTA holds the view that a modest remuneration incentive will (a) stimulate the level of interest in the positions and (b) open consideration of interest to some persons who may not be able to extend interest without some financial offset for the contribution time required being in place.

The NSW GBOTA would further suggest that the provision regarding administrative support in the Greyhound Racing Act 2009 requires amendment. Currently, GRNSW is to provide such reasonable administrative support as may be required to enable GRICG to exercise its functions.

In practice, this administrative support has taken the form of GRNSW employees providing secretariat support for GRICG. The NSW GBOTA believes that GRICG should be funded so as to enable it to fund its own independent administrative support, including executive support and web-site development and maintenance.

Administrative support provisions within Schedule 2 of Act, need to be amended to reflect the following intent:

GRNSW is to fund the reasonable administrative support as may be required to enable GRICG to exercise its functions. Such funding will be based on GRICG preparing a budget annually for approval within the overall budget of GRNSW.

Q27. Should a GRICG member be eligible to sit on the selection panel to recommend appointments to GRNSW?

The NSW GBOTA would support this suggestion, especially if the independent Board structure is maintained.

Q28. How could the consultation requirements in the Act be strengthened?

The NSW GBOTA believes that the most effective approaches to strengthening the consultation responsibilities of GRNSW would be, preferably, to stipulate the consultation requirements in exacting form in the Act or, alternatively, for the Act to stipulate that GRNSW must have in place an annual consultation plan which is approved by the Minister.

The stipulations within the Act for the minimum requirements required for the consultation agreement would be based on the current commitment GRNSW has given to the Minister for Racing as follows:

- *Half yearly 'Chairperson and CEO meetings of all TAB Clubs and GRNSW executive;*
- *Half yearly TAB Club seminars;*
- *Yearly meeting of the Greyhound Racing NSW Board with the Greyhound Racing Clubs Association;*
- *Quarterly Racing Planning & Programming meetings;*

- *Half yearly meetings of the Greyhound Racing NSW Board with the GRICG, with the Chief Executive or Chairperson to meet with GRICG bi-monthly;*
- *Three regionally held GRNSW Board meetings and regional consultation meetings open to participants per year based on the Government's community cabinet model.*
- *Regular consultation with industry stakeholders on specific policy and operational matters as and when they arise.*

In addition, the NSW GBOTA believes that there is a need for an annual Stakeholders meeting to be held at which presentations on the following should apply:

- *Outline of the coming year budget*
- *Overview of past year financial performance*
- *Overview on Strategic Plan and the progress of objectives within*
- *Outline of major issues and key wagering information*

Finally, consultation with GRICG needs to be strengthened in relation to strategic planning and the annual Budget. GRICG should be involved and consulted consistently through the development and endorsement of any Strategic Plan or review and should also be a point of strong consultation with regard to the annual budget preparation and finalisation.

Both the Stakeholders Forum and the GRICG strategic plan/budget consultation requirements should be stipulated in the Act or part of the Consultation Plan.

OLGR commentary

Concerns were expressed to the Legislative Council Select Committee by industry participants relating to the independence of the role of Greyhound Racing Integrity Auditor. In addition, comment has been made regarding what is perceived to be the limited scope and powers of the Integrity Auditor to undertake an inquiry of its own motion.

The Select Committee made the following recommendations:

1. That the integrity roles of the three racing codes be reviewed, with the aim to establish a single Racing Integrity Commissioner to oversee thoroughbred racing, harness racing and greyhound racing.

2. That the proposed Racing Integrity Commissioner should have the following powers over each racing body:

- *to conduct annual audits of the internal integrity processes and systems,*
- *to investigate complaints made about the integrity processes and systems,*
- *to conduct own motion inquiries that do not relate to any specific complaint and may include an investigation into systematic issues in racing,*
- *to facilitate the exchange of information between the controlling bodies, the NSW Police and other law enforcement agencies, as appropriate,*

The Select Committee also recommended that the proposed Racing Integrity Commissioner be funded by the Government, independent of the controlling bodies.

The Select Committee further recommended that if a single Racing Integrity Commissioner for the whole of the NSW racing industry was not established, then the Greyhound Racing Integrity Auditor should be replaced with a Greyhound Racing Integrity Commissioner with the same powers and funding as set out above.

The government is of the view that public confidence in the integrity of the racing industry is vital to the future development and sustainability of the industry as a whole. Having regard to the important contribution that the racing industry makes to the economic and social fabric of the state, it is considered that there should be from time to time a review of the integrity assurance arrangements for the industry to ensure they reflect best practice.

A working party is to be established by the government in the first part of 2015 to examine the current corruption prevention and detection arrangements for the racing industry and the merits or otherwise of having Greyhound Racing NSW, Harness Racing NSW and Racing NSW declared public authorities for the purposes of the Independent Commission Against Corruption Act 1988. If adopted, this would place the racing controlling bodies under the purview of ICAC and allow ICAC to investigate complaints against them.

The working party will also review the overall integrity arrangements for the NSW racing industry.

OLGR associated questions and NSW GBOTA response

Q29. Has the role of Greyhound Racing Integrity Auditor achieved the intention of providing a mechanism for complaints against racing officials to be properly investigated?

No. The NSW GBOTA believes that the role has not been effective. The NSW GBOTA would support implementation of the Legislative Council Parliamentary Inquiry recommendations regarding Racing Integrity Commissioner to oversee Integrity processes and systems and procedures across racing, harness racing and greyhound racing.

Q30. Is there a need for the Integrity Auditor to report on all investigations, whether or not there is a view that there has been a contravention of the legislation?

Yes. The NSW GBOTA, during 2014, tendered to manage the Gardens racetrack at Birmingham Gardens. Despite being the only tender to offer up-front acquisition via vendor or bank finance, despite being the only tender to appoint a quantity surveyor to provide a report on the capital rehabilitation and maintenance needs of the facility and despite providing advanced modelling that clearly identified profitability over the foreseeable future inclusive of acquisition financing, the NSW GBOTA was not appointed as the successful tenderer.

The NSW GBOTA then placed a total of 36 questions before the Probity Officer appointed to oversee the tender process but received a simple four point response which failed to address the legitimate concerns the Association had with regard the consideration of its

corporate governance structure, the organisational process that applied through the tender, incorrect public statements made by GRNSW concerning the Association's acquisition offer, information transfer and failings, in our view, on the part of GRNSW to properly inquire during the tender.

The NSW GBOTA believes that a more robust consideration of its legitimate concerns would take place if a Racing Integrity Commissioner was in place.

Q31. Should the findings of investigations undertaken by the Integrity Auditor be made public?

Yes, provided there are no issues of commercial confidence or legalities preventing some of the information being declared public.

Q32. Are the powers and functions of the Integrity Auditor sufficiently provided for by the Act?

No. Refer to answers 30 and 31.

Q33. Do the terms of the Act sufficiently provide for the Integrity Auditor to be independent of GRNSW?

Clearly the Racing Integrity Commissioner format (based on the Victorian equivalent) as proposed by the Legislative Council Parliamentary Inquiry recommendations, would be superior.

OLGR commentary

6.3 Reporting requirements

Section 16 of the Act requires that GRNSW must, as soon as practicable after 30 June, and in any case before 1 November in each year, prepare and forward to the Minister a report of its work and activities for the 12 months ending on that 30 June.

The report must include copies of the financial statements of GRNSW for the 12-month period to which the report relates together with an auditor's report on those statements prepared by an independent auditor.

The Minister is to table the report or cause it to be tabled in the Parliament as soon as practicable after it is forwarded to the Minister.

GRNSW is also to make copies of the report available to the public at a reasonable price. In this respect, GRNSW publishes an electronic version on its website www.thedogs.com.au which is freely accessible).

Separately to this requirement, GRNSW regularly reports on issues within the industry such as the results of stewards' inquiries and appeals to the independent Racing Appeals Tribunal and provides notices to industry participants by way of its website.

OLGR associated questions and NSW GBOTA response

Q34. Should GRNSW be required under the legislation to report to the Government and/or industry on particular greyhound racing industry matters outside of its annual reporting requirements?

The NSW GBOTA believes the following information should be presented to the Minister for Racing annually:

- Budget (inclusive of prizemoney commitment detailed cost break down)
- Strategic Plan progress reports
- Stakeholder Consultation Plan

Q35. If so, what types of matters/activities should be required to be reported by GRNSW and how often?

The matters raised in the answer to question 34 would require annual reporting.

OLGR commentary

6.4 Animal welfare

Over several years, many people and organisations with a close interest in the greyhound racing industry have expressed strong concerns about the alleged mistreatment of greyhounds either during or after their racing careers.

The oversight of animal welfare generally in NSW falls within the scope of the Prevention of Cruelty to Animals Act 1979. The objects of this Act are to prevent cruelty to animals in general within NSW and to promote the welfare of animals by placing certain responsibilities upon a person in charge of an animal. This legislation provides for the powers of RSPCA inspectors and NSW Police to enter land, examine animals and for the search and seizure of evidence in relation to possible breaches of that Act. It also provides for action to be taken for alleged breaches and for penalties to be imposed on a person found guilty of an offence.

The Greyhound Racing Act 2009 does not specifically address animal welfare matters. However, it is accepted that as the controlling body for greyhound racing in this state, GRNSW has certain responsibilities regarding the welfare and protection of greyhounds.

GRNSW has in place several policies, procedures and programs relevant to greyhound welfare. These include the establishment of a joint National Greyhound Welfare Strategy with Greyhound Racing Victoria to establish new standards of animal welfare excellence in greyhound racing. A key element of the National Greyhound Welfare Strategy is the introduction of national initiatives to capture data on breeding and to reduce breeding of unsuitable greyhounds.

In addition, the GRNSW Greyhound Racing Rules provide sanctions for cruel, abusive or inhumane treatment of a horse by a licensed participant.

Importantly, it is the interests of greyhound owners, breeders and trainers to ensure that their greyhounds are appropriately cared for.

OLGR associated questions and NSW GBOTA response

Q36. How should animal welfare protections be embedded in the Act, without duplicating or undermining the role of the RSPCA or NSW Police?

The NSW GBOTA would suggest that the Act should include the need for the establishment, maintenance and reviewing of a Greyhound Welfare Strategy. It should be optional as to whether this strategy is State based or part of a national strategy. The strategy should make the industry and participant obligations to animal welfare clear and should refer to impacting aspects of the Prevention to Cruelty Act 1979. Participant and club registration should be contingent on acceptance of the Greyhound Welfare Strategy.

Q37. If so, what statutory requirements or functions should be imposed on GRNSW?

Not required.

Q38. What powers would be required for GRNSW to undertake these functions?

Not required

Q39. How would these new responsibilities and powers sit with the existing provisions of the Prevention of Cruelty to Animals Act 1979?

The current rules of greyhound racing are in tandem with the Prevention to Cruelty Act 1979. The NSW GBOTA believes that with an appropriate Greyhound Welfare Strategy and rules that are aligned to the Prevention of Cruelty to Animals Act 1979 and cooperation between GRNSW, RSPCA and the NSW Police, then appropriate animal welfare and participant behaviour will apply. The Greyhound Welfare Strategy, the rules and the cooperation between the GRNSW, RSPCA and the NSW Police should be consistent with and not above community standards for all canines.