Submission to the Special Commission of Inquiry into the Greyhound Racing Industry in NSW

13 July 2015

The Animal Law Institute is a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system.
Dear Ms Drummy,

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Introduction and executive summary

1. The Animal Law Institute (ALI) is grateful for the opportunity to make this submission to the Special Commission of Inquiry into the Greyhound Racing Industry in NSW (Commission).

2. ALI is a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system.

3. By way of summary, ALI makes the following comments and recommendations to the Commission.

    a. In light of the serious animal welfare failings that have come to light in recent years, as well as the doubts previously raised by the Select Committee on Greyhound Racing in NSW (Select Committee) as to the industry’s economic viability, ALI does not support the continuation of greyhound racing in NSW.

    b. The Prevention of Animal Cruelty Act 1979 (NSW) (the Act) should be amended to make clear that euthanising healthy greyhounds and greyhound pups on the basis that they are surplus to need, retiring, underperforming, or otherwise unwanted is an offence, regardless of the manner in which the greyhound is killed.

    c. Sections 21 and 24(1)(b)(i) of the Act should be amended so as to prohibit the use of greyhounds for the purpose of hunting live animals.

    d. Greyhounds should be made subject to the micro-chipping and registration requirements under the Companion Animals Act 1998 (NSW).

    e. The breeding restrictions recently incorporated into the Greyhound Racing Rules (NSW) should be reviewed in light of available industry data and following consultation with relevant industry stakeholders and animal welfare groups. Breeding restrictions should also be incorporated into the Act.

    f. The greyhound industry should be designated as an ‘animal trade’ under the Act and accompanying regulations. A Code of Practice for the treatment of animals in the
industry should also be developed by the Animal Welfare Advisory Council pursuant to s 34A of the Act.

g. ALI endorses the recommendation of the Select Committee for the establishment of an independent Racing Integrity Commissioner with responsibility for investigating breaches of, and enforcing, animal welfare laws and regulations.

h. The Act should be amended to permit the responsible Minister to nominate the newly formed Racing Integrity Commission (RIC) as an approved charitable organisation, and to appoint members of the RIC as officers and inspectors under the Act.

Viability of the greyhound racing industry in NSW — TOR C6

4. ALI is broadly opposed to the exploitation of animals for the purposes of sport or entertainment. The moral force of that position has been argued persuasively elsewhere, and is not the focus of this submission.

5. There are, however, two aspects of the NSW greyhound industry which are of particular concern, and which underpin our view that the industry is not viable.

6. As the Commission would be well aware, in recent years a number of very serious issues have emerged in relation to the treatment of greyhounds and other animals in the industry. For completeness, a summary of the major issues that have been identified in previous inquiries in NSW and other states is included in the appendix to this submission. Amongst the key concerns is the prevalence of abhorrent practices such as live baiting, as well as the staggering number of healthy greyhounds and greyhound pups that are euthanised each year.

7. The issues surrounding animal cruelty reflect problems at the very root of the greyhound industry.¹ For that reason, it seems broadly to be acknowledged that any meaningful improvement to animal welfare practices within the industry cannot be achieved without a significant commitment of additional resources and funding. For example, one of the recommendations emerging from the Select Committee’s first report into Greyhound Racing in NSW² (NSW Select Committee’s First Report) was for the NSW Government to commit greater resources for greyhound rehoming services to address overbreeding.³ Similarly, any measure aimed at reforming the industry so as to increase its capacity to investigate and enforce breaches of animal welfare laws will self-evidently require a substantial increase in government funding and resources.

¹ For example, the own motion inquiry conducted by Victorian Racing Integrity (Victorian Inquiry) noted that live baiting was ‘an acceptable historical and cultural practice’. The report also notes that greyhound racing was an ‘insular’ industry characterised by a culture ‘that does not accept whistleblowing’, and which views animal welfare as a subsidiary concern. There is no reason to doubt that the same observations would apply with equal force to the industry in NSW.

² Select Committee on Greyhound Racing in NSW, First Report, 28 March 2014 (NSW Select Committee’s First Report).

³ Select Committee’s First Report, 114.
8. What makes this issue particularly problematic is that there are already very serious questions regarding the economic viability of the NSW greyhound industry in its present form. In the NSW Select Committee’s First Report, the Select Committee concluded that:

...with its current structure and sources of revenue the greyhound racing industry in New South Wales may be unsustainable. Returns to trainers and owners do not cover costs, which leads to the loss of quality dogs to Victoria and elsewhere, a reduced number of industry participants and contributes to making existing clubs and tracks unviable. 4

9. That conclusion came on the back of an acknowledgement by the former CEO of Greyhound Racing NSW that the industry was ‘not viable in the short to medium term and certainly not sustainable in the longer term’, and that a capital injection from the government in the order of $154 million was required. 5

10. Put simply, the very serious animal welfare failings which have prompted this inquiry, as well as similar inquiries in other states, cannot be addressed without a significant overhaul of the industry, and a very substantial further commitment of government funding and resources. It is difficult to see how this kind of public expenditure could be justified in respect of an industry which, on all present indications, is itself economically unviable.

Gaps in existing laws — TOR B1, A1, E4

11. ALI has identified a number of areas in which existing laws regarding the protection of animals in the greyhound industry could be improved, should the Commission recommend that the industry continue.

Euthanasia of greyhounds

12. The unacceptably high rates of euthanasia of greyhounds is now widely acknowledged as a major problem within the industry.

13. The present laws regarding when euthanasia of a greyhound, or any animal for that matter, is permitted are somewhat unclear. The NSW Select Committee’s First Report states that:

Euthanising an animal is not unlawful under the Prevention of Cruelty to Animals Act 1979 (NSW) as long as the pain and suffering inflicted during the act of killing does not amount to cruelty. The euthanasia of greyhounds who may be underperforming, injured, surplus to need or too old is also not unlawful, as long as the act of killing/euthanasia is conducted without cruelty. 6

14. That proposition is not without some doubt. Indeed, as explained in the discussion which follows, it is at least arguable, if not likely, that euthanasia of a greyhound for no other reason than that it is underperforming or ‘surplus to need’ would constitute an offence against s 6 of the Act by falling within the scope of aggravated cruelty against an animal.

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4 NSW Select Committee’s First Report, Summary of findings, xii.
5 Ibid 27, 45.
6 NSW Select Committee’s First Report, 101 [7.38].
15. The key question is whether such conduct would fall within the definition of an ‘act of cruelty’ under s 4(2) of the Act. The definition relevantly provides that an act of cruelty includes ‘any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably ... killed’. An act of aggravated cruelty is relevantly defined in s 4(3) as ‘an act of cruelty ... which results in ... the death ... of the animal’.\(^7\)

16. It follows that euthanising a greyhound will constitute an act of aggravated cruelty unless one takes the view that killing the animal was not ‘unreasonable, unnecessary, or unjustifiable’.\(^8\) Having regard to the purposes of the statute, it is difficult to see how those words could be construed so as to permit the killing of a perfectly healthy animal, for no other reason than that it is ‘surplus to need’.

17. Nonetheless, to avoid any ambiguity, ALI recommends that the Act be amended so as to make clear that euthanising a greyhound will constitute an offence except in the circumstances referred to in s 26AA.\(^9\) This position is substantially consistent with what is currently provided in clause 14.1 of the Greyhound Racing NSW (GRNSW) Code of Practice for the Keeping of Greyhounds in Training.\(^10\)

**Live baiting – s 21 of the Act**

18. Section 21 of the Act prohibits a person from, inter alia, causing, procuring, permitting or encouraging an activity in which an animal is released from confinement for the purpose of its being chased, caught or confined by a dog. The section is, however, subject to s 24(1)(b)(i), which provides a defence for any act or omission done in the course of, and for the purpose of, ‘hunting, shooting, snaring, trapping or capturing the animal’ in a manner that ‘inflicted no unnecessary pain upon the animal’.

19. The effect of the provisions is to permit a greyhound owner or trainer to use a greyhound in order to hunt live animals. That is particularly problematic given the issues surrounding the socialisation of greyhound pups, and the flow-on effects those issues have (e.g. for the rehoming of greyhounds). These issues have been identified in the NSW Select Committee’s First Report, as well as the report by the Queensland Greyhound Racing Industry Commission of Inquiry (QLD Final Report)\(^11\) and the report by the Racing Integrity

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\(^7\) Thus, if euthanising a greyhound constitutes an act of animal cruelty, it will also by definition constitute an aggravated act of animal cruelty.

\(^8\) Note that the Act provides a general exclusion for ‘stock animals’, and for animals killed for the purpose of producing food for human consumption. Neither of those exceptions, nor any other general exception in the Act, would apply to greyhounds.

\(^9\) That section permits a veterinary practitioner to euthanise an animal that is so severely injured or diseased that it is cruel to keep it alive.

\(^10\) That clause provides that euthanasia should only be considered where a greyhound becomes seriously ill or injured and where it is recommended by a veterinarian who has examined the greyhound.

Commissioner following the 2015 Own Motion Inquiry into Live Baiting in Greyhound Racing in Victoria (Victorian Inquiry Report)\(^\text{12}\). For example, the Victorian Inquiry Report notes:

> Greyhound pups are generally reared at farms and other large properties where wild rabbits also exist and the pups will chase, and occasionally kill a rabbit. There is no regulatory framework that will prevent or detect this activity or participants from releasing a rabbit into a paddock for a Greyhound pup to chase and kill.\(^\text{13}\)

20. ALI recommends that the ss 21 and 24(1)(b)(i) of the Act be amended so as to prohibit the use of greyhounds for the purposes referred to in s 24(1)(b)(i).

**Registration and reporting requirements for greyhounds**

21. In its submission to the first inquiry, the Barristers Animal Welfare Panel (BAWP) argued that greyhounds should be subject to the micro-chipping and registration requirements under the Companion Animals Act 1998 (NSW), and that the existing exemptions for greyhounds provided under clauses 4(2) and 16(g) of the regulations made under that Act should be removed.\(^\text{14}\)

22. Since the time of that submission, some amendments have been made to the registration requirements under the Greyhound Racing Rules.\(^\text{15}\) However, the racing rules, particularly the requirements in relation to greyhound registration, are convoluted and poorly drafted.

23. In any event, for reasons developed later in this submission, ALI is of the view that responsibility for the regulation and enforcement of animal welfare issues in the industry should be removed from the purview of GRNSW. Accordingly, we would respectfully endorse the submission put forward by BAWP that greyhounds should be made subject to the micro-chipping and registration requirements under the Companion Animals Act 1998 (NSW).

**Breeding restrictions**

24. We note that R127 of the Greyhound Racing Rules were amended on 1 July 2015 to include the following breeding restrictions:

> (11) A breeding female cannot be used for breeding more than three (3) litters without prior veterinary certification of appropriate health and fitness for further litters, and the approval of the Controlling Body in writing. The approval granted by the Controlling Body under this sub-rule will be to allow one (1) additional service/insemination only, irrespective of the result of said service/insemination. The veterinary certification must be obtained within 120 days prior to the date of the additional service.

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\(^\text{13}\) Victorian Inquiry Report, 16.


\(^\text{15}\) See rules 136-137.
The owner of a breeding female, or the person with authority to breed that female, shall not cause her to whelp more than two (2) litters in any 18 month period.

25. ALI welcomes these amendments as a positive first step to address the serious issue of overbreeding.

26. ALI recommends that the Commission review the appropriateness of the breeding limits outlined in the rules in light of available industry data, and consultation with relevant industry participants and welfare groups. ALI also recommends that the Commission consider whether it is appropriate to introduce a limitation on breeding females until they are of a particular age (e.g. at least 12 months of age). ALI recommends that any breeding limits should be given statutory force by way of incorporation into the Act.

Greyhound industry should be subject to Animal Welfare Advisory Council Code of Practice

27. The Act and the accompanying Prevention of Animal Cruelty Regulations 2012 (the Regulations) create a regime for the regulation of ‘animal trades’ to which the greyhound industry is not currently subject.

28. Section 4(1) of the Act defines an ‘animal trade’ as ‘a trade, business or profession in the course of which any animal is kept or used for a purpose prescribed’ by the Regulations. Section 34A(1) also relevantly provides that the Regulations may prescribe a Code of Practice relating to the welfare of companion animals,16 and that such codes of practice are to be reviewed by the Animal Welfare Advisory Council.

29. Section 25 of the Regulations prescribe certain ‘purposes’ for the purpose of the definition of an ‘animal trade’ under s 4(1) of the Act. Section 26 of the Regulations impose certain requirements in relation to the conduct of animal trades. Those requirements include an obligation to comply with the relevant Code of Practice made by the Animal Welfare Advisory Council which is applicable to that animal trade.

30. At present, the greyhound industry is not a designated animal trade. It is also not subject to any Code of Practice approved or made by the Animal Welfare Advisory pursuant to the Act and Regulations. Rather, an owner of a greyhound is subject only to the Code of Practice for the Keeping of Greyhounds in Training issued by GRNSW.

31. ALI recommends that the greyhound industry be designated as an animal trade under the Act and that it be made subject to a Code of Practice to be approved by the Animal Welfare Advisory Council following consultation with relevant stakeholders.17 This is consistent with a move away from self-regulation of animal welfare issues by the industry. It will also ensure that any code of practice to which the industry is subject has clear statutory force, and will avoid the confusion caused by the various overlapping industry rules and

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16 Companion animals is not defined in the Act. However, dogs fall within the definition of companion animals under the Companion Animals Act 1998.

17 The RSPCA has also called for the industry code of practice to be replaced with one approved by the Animal Welfare Advisory Council.
regulations. The Code should make clear that it does not govern the circumstances in which a greyhound may be euthanasised, which ALI submits should be governed by the cruelty provisions in the Act.

Investigation and enforcement of animal welfare breaches — TOR E4 & E5

32. The exposure of live baiting and other serious animal welfare issues in the industry, and the various inquiries that have been undertaken thus far in response to those revelations, have served to highlight how badly the existing systems for investigation and enforcement of animal cruelty have failed.

33. ALI considers that there are two primary concerns that need to be addressed in relation to this issue.

34. First, it is plain that the authorities which have statutory responsibility for investigating and enforcing breaches of existing animal welfare laws are grossly under resourced, and ill-equipped, to be able perform that function in relation to the greyhound industry.

35. Each of the RSPCA, the Animal Welfare League and NSW Police share responsibility for investigating and prosecuting contraventions of the Act. The Act confers a broad range of powers upon inspectors appointed from those organisations to enable them to carry out their functions.

36. Information from the RSPCA indicates that it has 32 inspectors covering both metro and regional NSW. Those inspectors are responsible for investigating over 12000 cruelty complaints that the organisation receives each year. The operating costs of RSPCA NSW are approximately $43 million a year, of which less than 1% comes from government funding. The Animal Welfare League, by contrast, has only 2 inspectors who last year dealt with over 1000 enquiries and 516 official complaints. Although it may be assumed that NSW Police has significantly more resources at its disposal, it is equally likely that issues relating to animal welfare would be of subsidiary importance.

37. Secondly, ALI considers that the system of industry self-regulation, whereby GRNSW is responsible for both administering the sport, as well as developing, investigating breaches of, and enforcing animal welfare regulations, has proven to be untenable.

38. In that respect, ALI endorses the recommendation of the Select Committee that an independent RIC be established with responsibility for, inter alia, investigating breaches of, and enforcing compliance with, animal welfare laws and regulations in the greyhound racing industry.

39. ALI would also make the following additional comments in relation to that recommendation.

40. First, ALI recommends that the Act be amended so as to permit the responsible Minister to nominate the RIC as an approved charitable organisation, and to appoint members of the RIC as officers and inspectors for the purposes of the Act. This will ensure that those
responsible for animal welfare within the RIC have sufficient powers to enable them to carry out their functions.

41. Secondly, ALI notes the finding made by the Victorian Racing Integrity Commissioner that the ability of welfare officers in that jurisdiction to investigate and enforce animal welfare breaches was hampered by their lack of industry knowledge and experience.\(^1\) It is therefore essential that the animal welfare and racing integrity functions within an RIC work closely together, and that those animal welfare officers have appropriate experience and industry training.

42. Thirdly, as touched on previously, it is essential that any new authority charged with protecting animal welfare within the industry is appropriately resourced and funded to be able to carry out that function effectively.

ALI thanks the Commission once again for the opportunity to make this submission.

Should the Commission have any questions regarding this submission, please do not hesitate to contact The Animal Law Institute via email at policy@ali.org.au.

Yours sincerely,

The Animal Law Institute.

\(^1\) Victorian Inquiry Report, 19.
Appendix — Summary of existing animal welfare issues in the greyhound industry

1. There are a range of animal welfare concerns inherent to the nature of, and practices within, the greyhound industry. Previous inquiries conducted by the NSW, Victorian and Queensland governments have identified these animal welfare issues, which include animal mistreatment and neglect, overbreeding, high euthanasia rates and the injuries sustained by greyhounds at racing events. This section of the submission will briefly highlight the issues of concern while drawing on comments from previous inquiries.

2. The perception of animals within the greyhound industry cultivates the animal welfare concerns listed above. Firstly, ALI submits that the welfare of the greyhounds and other animals are a low or irrelevant concern to the industry. For example, the use of live baiting is an ‘acceptable historical and cultural practice’ while unregistered greyhounds are commonly referred to as ‘wastage’. Secondly, the inherent nature of the industry is conducive to these concerns. Whistleblowing is non-existent and thereby prevents people speaking out against animal mistreatment, while board members are not experienced in animal welfare, instead holding commercially driven interests. This ingrained cultural attitude towards animals is contributory to the existence of animal welfare issues in the industry.

3. The overbreeding of greyhounds is a fundamental concern to ALI. The Australian Veterinary Association stated that there are ‘significantly more animals are born than will have a long, healthy career in racing leading to unacceptable wastage levels’. This means that not only do high breeding rates mean it is impossible and impractical to rehome all the greyhounds, it has also resulted in a high number of greyhounds who remain unaccounted for every year. The GRNSW stated that there are 2,400 greyhounds every year which are not registered, and while there is no conclusive proof as to the fate of these dogs, the Select Committee concluded that they are most likely euthanised. The RSPCA confirmed that overbreeding was a contributing factor to the high euthanasia rates within the industry, while the Queensland Greyhound Racing Industry Commission of Inquiry found that there was an average ‘wastage’ rate of approximately 30% from 2003 to 2013. ALI agrees with other organisations that have submitted that it is estimated that approximately 4,000 healthy dogs (including pups and breeding dogs) are killed in New South Wales each year in the greyhound racing industry.

4. ALI strongly opposes the imbedded practice of euthanasia in the greyhound industry. Not only are the rates of euthanised dogs unacceptably high, the methods of euthanasia are also cruel.

19 Victorian Inquiry Report, 87.
20 NSW Select Committee’s First Report, 7.28.
21 Victorian Inquiry Report, 87.
22 Victorian Inquiry Report, 244.
23 QLD Final Report, 277.
24 NSW Select Committee’s First Report, 7.33.
25 NSW Select Committee’s First Report, 7.28.
26 NSW Select Committee’s First Report, 7.27.
27 QLD Final Report, 286.
For example, Greyhound Rescue found that it was commonplace in the industry for unwanted greyhound pups to be disposed of by drowning. There is also a misconception in the industry as to what retirement should entail for greyhounds. Rather than transitioning the ex-racing greyhounds to a life of care generally expected of a domestic pet, retirement forms given to the Queensland Greyhound Racing Industry Commission of Inquiry revealed that a majority of them were either euthanised, died as a result of accidents or simply went missing.

5. The injuries sustained by the greyhounds on the racing track also contribute to the high rates of euthanasia. The RSPCA has stated that the injuries sustained on the track, either for racing or trialling, are expensive to treat and therefore results in the dogs being euthanised. The number of injuries is also alarming, with the GRNSW revealing that during the course of one month in 2013, 175 injuries to greyhounds occurred.

6. Live baiting is another practice that is a consequence of the cultural attitude towards animal welfare in the industry. Although live baiting is illegal, the Four Corners report demonstrated that the practice is prevalent throughout the greyhound industry, and information and submissions have been previously provided to the NSW government evidencing that live baiting is still practiced. Additionally, the Own Motion Inquiry into Live Baiting in Greyhound Racing in Victoria concluded that live baiting is unlikely to be confined to one property or group of participants. Live baiting is supported by the perception in the industry as being an ‘acceptable historical and cultural practice’.

7. There are also concerns over the methods used to socialise greyhounds from an early age. In the NSW Select Committee’s First Report, comments of Dr Cunnington were stated in which he noted that while the methodology of rearing greyhounds meant that the dogs were able to run in open spaces and socialise with other greyhounds, there was no socialisation with other breeds of dogs and little with humans. This results in the greyhounds failing to have experiences with noise, activities and handling. The RSPCA noted this social depravation impacts negatively on the greyhound’s welfare and limits the ability to rehome them when they are retired or become unwanted. The welfare of the greyhounds is further impaired when the pups are transferred off the paddocks for training, where they inevitably start a kennelled life. Not only does the current methodology for socialising greyhounds impact upon their welfare, evidence suggests that improved socialisation can lead to reduction of ‘wastage’ in the industry.

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28 NSW Select Committee’s First Report, 7.42.
29 QLD Final Report, 318.
30 NSW Select Committee’s First Report, 7.55.
31 QLD Final Report, 202, reference to the 2013 Select Committee on Greyhound Racing in NSW.
32 Victorian Inquiry Report, 262.
33 Victorian Inquiry Report, 87.
34 NSW Select Committee’s First Report, 7.47.
35 NSW Select Committee’s First Report, 7.46.
36 NSW Select Committee’s First Report, 7.48.
37 NSW Select Committee’s First Report, 7.49; see also QLD Final Report, 357.