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Position paper: *Racing Amendment (Integrity and Disciplinary Structures) Bill 2018 (Racing Structures Amendment Bill)*

The Victorian government has recently introduced legislation that would, if passed, make significant changes to the way in which Victorian greyhound racing is administered.

The purpose of this note is to identify for members:

- what the Racing Structures Amendment Bill proposes and how it may affect them; and
- our position on one or more parts of the Racing Structures Amendment Bill.

Summary of GOTBA's position: Participant input now urgently needed at GRV Board level

The draft legislation is yet another step in the bureaucratisation of greyhound racing: it proposes more lawyers and other officials in positions of influence, and more powers to GRV. An outcome of this legislation is that the participants' voice, already sidelined over the last few years, would recede further into the background, with no mandated voice on any formal governing body in Victorian racing.

Adding more oversight can be, and could be here, a good thing. There are areas, such as the new Victorian Racing Tribunal, where this legislation could probably only improve on what presently exists.

However, our overall fear is that the proposed legislation leads to the typical inefficiencies of bureaucracy: costly,¹ inefficient duplication of roles and tasks as well as an integrity or disciplinary super-structure hard-wired to have a tin ear to the greyhound racing industry and its participants.

The legislation also ultimately gives greater power to GRV as regulator, particularly in terms of licensing and imposing conditions on licences of participants and on the registration of greyhounds. It gives GRV more powers on inspection.

This makes us nervous. GRV is increasingly itself an overspending,² bureaucratic organisation that 'consults' but can fail to listen, particularly on the use of its powers. Given a choice between an unfair rule or policy that can serve a marketing purpose or a measured one that balances participant interests, GRV will ordinarily choose the former.

GOTBA can however support the Racing Structures Amendment Bill, with amendments (see below), and with one absolutely fundamental condition – **at least one participant voice must be (permanently)**

¹ The costs of the Victorian Racing Integrity Board and the Victorian Racing Tribunal may come out of GRV's budget, and therefore also from the amounts ultimately available to the participant - new section 95V.

² According to its 2016-17 annual report (the most recent available), in 2016-17 year on year total prizemoney went down, employee and associated costs (including integrity department costs) nearly **doubled** (from \$11m to \$21m).

returned to the GRV Board. The proposed structural changes to the administration of greyhound racing, and the recent debacle of the Code of Practice for the Keeping of Racing Greyhounds (rectified through GOTBA Vic and participants, not GRV), demand it. As do we.

GOTBA Vic also wants to know the projected annual cost of the VRT and VRIB, and precisely how this affects GRV's budget going forward. It is well past time for greyhound racing to pay more attention to its economic future.

The Racing Structures Amendment Bill: what it proposes

The draft legislation arises out of recommendations made during the 2015 Bittar Review, which reviewed the integrity (ie stewards and investigative, and disciplinary) structures in Victorian racing generally. But the draft legislation proposes changes that go further than what Mr Bittar recommended.

The proposals in the Racing Structures Amendment Bill fall under 4 general areas, on which we comment more further below:

1. Establishment of the Victorian Racing Industry Board (VRIB) as a new body to oversee, but not replace, the separate integrity functions of each racing code.
2. Replace the RADB (Greyhound) (and other racing code equivalents) with a single Victorian Racing Tribunal with new powers, from which appeals will be strictly limited (to VCAT only as to penalty (and not otherwise); to Supreme Court as to errors of law).
3. Amend powers of the Racing Integrity Commissioner
4. Expand GRV's powers as to licensing and registration and as to inspection of properties; increase possible number of GRV Board members. While not given prominence by GRV in its release to participants (and indeed GRV seems to have proceeded in many respects on the basis that it already had certain of these powers),³ these are of particular everyday interest to participants.

The proposals may each affect participants in different ways. It is important to know what they are. We identify our position in each section below.

Proposal 1: The Victorian Racing Industry Board (VRIB)

This introduces a further layer of bureaucratic oversight of each racing code's integrity operations through the creation of a group of up to 7 persons appointed by the Minister for Racing.

The VRIB could, for example, (among other things – see new s 95H) review and provide recommendations related to integrity resourcing and the integrity budgets of GRV; advise and make recommendations to GRV relating to integrity policy and participant licensing; and (interestingly) review for new or amended rules of racing as they relate to integrity and make recommendations in relation to the rules as they relate to integrity.

³ We disagree that GRV and participants currently 'agree' to certain of these powers being exercised by GRV as a matter of contract. GRV as a statutory body only has certain powers if given to it under legislation, and assuring that GRV in fact has power to do certain things is why certain legislative changes are being made.

The VRIB could issue directions to GRV, seemingly on any issue within its general functions (new s 95H(1)(l)). It is not clear why this is necessary, if the rest of the VRIB's functions are mainly to 'review' and 'recommend'. We tend to think the power to direct should be removed – if a controlling body ignored the VRIB's recommendations with an adverse result, the VRIB should only be able to make a recommendation to the Minister to take action against the Board of the controlling body (ie use the power given to it at new s 95S). The VRIB should not be able to directly intervene in the operations of the controlling body.

A proportion of the cost of the VRIB will come out of GRV's budget (new s 95V).

A VRIB could work well, but we see 3 key risks or issues:

- Lack of greyhound industry knowledge or influence – the VRIB can direct GRV what to do. The VRIB would be a combined racing code body. The legislation requires only one person to have greyhound knowledge (a Deputy Chairperson). This is a concern – combined code bodies create a risk of inattention to matters specific to greyhound racing (including for example, the different basis for the rules of racing);
- Double handling and inefficiency – anecdotally, based on the Qld experience, the relationship between the oversight body and the actual integrity personnel can become strained and difficult, with the former encroaching upon the ordinary duties of the latter and creating real inefficiency. We could see the same thing happening here given certain of the functions of the VRIB (as to, for example, the review of the rules of racing by the VRIB and the ability to give directions to GRV); and
- Cost. The impact is unclear, but it is clear that greyhound racing will pay for a proportion of the VRIB, as will other codes.

Proposal 2: Replace the RADB (Greyhound) (and other racing code equivalents) with a single Victorian Racing Tribunal, with new powers

Both greyhound racing and the wider interests of justice are poorly served by the present RADB – a more rigorously fair, knowledgeable body with real regard to the interests of all parties (particularly self-represented participants) who appear before it is an immediate, fundamental necessity in the interests of greyhound racing.

This proposal creates a one stop, combined racing code tribunal with increased powers to compel participants and others to attend and provide material (and new offences for failures to comply), but with increased obligations (such as to content of reasons) also.

In greyhound racing, the VRT will hear the same types of matters (appeals and serious offences) as the present RADB. However, participants will no longer be able to appeal to VCAT other than as to penalty.

An error of law would need to be appealed directly to the Supreme Court which participants will very rarely do given the cost implications alone.

We would have preferred a route of appeal on law to VCAT – it has been the primary way in which many poor decisions of the RADB have been rectified - but appreciate that if the VRT operates as planned that may not be necessary.

On the whole, this proposal is supported, but it is absolutely critical that the government gets the VRT appointments right and that the VRT is from inception onwards, and remains thereafter, a comparatively low cost, accessible but competent forum. Not to mention one that is willing to test positions put by GRV as regulator.

We also wish to know the cost of the new tribunal.

GOTBA sees a risk that the VRT becomes a haven for lawyers where disparities of resources identified by the Bittar Report only become more firmly entrenched. The basic reality for greyhound participants is that they will likely be unrepresented at the VRT against a well-resourced regulator.

We make the following particular comments:

- New section 50P – a tribunal hearing a serious offence should not be made up of up to 5 members: that is too many. There should be 3 tribunal members (not more, not less). One peculiarity of greyhound racing rules is that there are a vast number of potential breaches labelled as ‘serious offences’. There is no meaningful test of why or whether any particular rule breach should be a serious offence;
- New section 50ZF – reasons – a party should be able to make the request for reasons for a VRT decision at the commencement of hearing before the determination is made (with a backstop date of 28 days after the decision is made for the making of any request); and
- New section 50ZF(4) – we applaud the insertion of this provision: whilst it may seem obvious and ought usually happen in any event, written reasons of the present RADB often do not provide findings on material questions of fact that led to the determination by referring to the evidence or other material on which those findings were based.

Proposal 3: Amend powers of the Racing Integrity Commissioner

This proposal expands the power of the Racing Integrity Commissioner to compel production of documents or attendance, with offences for failure to comply. It also caters for expanded functions to take into account the presence of the VRIB.

We have no comments on this proposal, other than the general comment that it caters for the additional level of structural complexity introduced by the legislation.

Proposal 4: Expansion of GRV’s powers as to licensing and registration; increase in Board size

The draft legislation caters for:

- expanded GRV board functions and powers allowing for licensing and registration of a wider pool of potential participants than just owners, breeders and trainers - any person who is involved in the keeping, racing, breeding, whelping, rearing, training or pre-training of a greyhound registered for greyhound racing or breeding;
- the ability to impose conditions on the licence of a greyhound participant (if used properly – that is, fairly – this could be an amendment that greatly increases the fairness of the disciplinary system);
- amended power to disqualify or suspend greyhounds themselves from racing (ie wider than just individual races);
- the power to determine whether a person is a fit and proper person to participate in greyhound racing;
- the power to withhold prizemoney; and
- broader powers to inspect properties of greyhound racing participants / where greyhounds are kept, and take samples and a variety of other items (previously GRV was only empowered by the legislation to take ‘documents’).

Our concern is the breadth of certain of the functions and powers, given how GRV appears to perceive its role. Some of the rules of greyhound racing purport to reach far beyond what they should (that is, well past matters associated with greyhound racing or breeding or the keeping of greyhounds that are being reared, trained or bred).

Our general comments:

- If the VRT is expanded as proposed, ALL licensing and registration decisions of GRV, including imposition of conditions on a licence or registration or a decision to decline to register or licence, should be capable of appeal by a participant or prospective participant to the VRT. This may require amendment to section 77(1) of the Racing Act; and
- GRV should only be able to withhold prizemoney after all clear of any individual race pending results of any swab taken from a greyhound. This should be placed in the legislation. That is, the power to withhold prizemoney should not be at large.

Particular comments:

- Section 28 (new clause 73A(d) and (e))– these are powers to licence and register greyhound racing participants in accordance with any policy or any condition developed by the GRV Board. It is far too broad.

Board

The GRV Board has minimal direct greyhound racing industry knowledge. GOTBA understands that the statutory requirement for at least one member with greyhound racing experience was removed in 2015 or 2016. Things have moved since then. GRV is different and more structured. There are other bodies, also with little greyhound knowledge, in place.

GOTBA has found that the GRV does not often enough take real heed of participant voices and this leads to detriment to both participants but also GRV. Consultation is largely a light show of no consequence.

It is imperative that the GRV Board now has one to two participant voices permanently on it. Consultation committees – for reasons noted – are not good enough. Few other substantial organisations have no direct input from those who do the vast majority of the work in it, and where a large body of knowledge resides.

GOTBA calls for a permanent addition of at least one participant seat on the GRV Board.

If there are any questions in relation to this note, please do not hesitate to contact us, via Sandra Reed or Lynton Hogan.

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