



Reg No: A0017661V

ABN: 67 306 599 068

**Submissions: Greyhound Owners Trainers Breeders
Association of Victoria Inc.**

**Syndicates and Victorian Greyhound Racing Integrity
Council: proposed Local Rule changes: consultation
Nov/Dec 2018**

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1. Introduction and GOTBA Vic’s approach to rule and policy changes

- 1.1 These submissions are made by the committee of the Greyhound Owners, Trainers and Breeders Association of Victoria Inc. (Reg No: A0017661V) (ABN: 67 306 599 068) (**GOTBA Vic**) for and on behalf of GOTBA Vic.
- 1.2 GOTBA Vic represents a large and growing number of Victoria’s registered greyhound racing participants across a range of roles. As an organisation, we are committed to serving the interests of our members and advancing the sport of greyhound racing. This includes recognising that the welfare of the greyhound is at the centre of any robust greyhound racing industry, and participation in it.
- 1.3 Submissions are made in this document in respect of the ‘Consultation Draft – November 2018’ Local Rules published at <https://greyhoundcare.grv.org.au/rules-of-racing/> on or around 14 November 2018.

Our general approach to rule and policy changes

- 1.4 GOTBA Vic is not opposed to new or changing rules or policies. However each must be (1) truly necessary based on evidence or need that is disclosed to participants (2) clear and (3) fair in form and application.
- 1.5 **Unnecessary or unnecessarily onerous rules or policies neither advance regulatory aims nor the general interests of the greyhound racing industry.** It is upon the proponent of rules or rule changes (usually GRV as regulator, but not always) to justify them. Each new rule or new regulation should not simply be assumed to be of benefit to the sport or to the greyhound itself.
- 1.6 Each new rule or policy must be tested against how participants actually participate. Matters of regulatory burden, or cost, should form part of GRV’s consideration when considering rules.
- 1.7 Where a rule, particularly a proposal to amend a rule, is expressed in broad terms that gives GRV significant discretion or that refers to ‘prescribed information’ (or the like), GRV should usually publish or identify policy that applies to how that discretion is applied or the considerations that will usually or are to be taken into account, or what the prescribed information is.

2. Syndications

General

2.1 **As an overall comment, and subject to certain specific matters which we address in the next section, GOTBA Vic supports the changes to LR 13 regarding syndications.**

2.2 We understand that GRV proposes to include certain new definitions and repeal and replace existing rule 13.1 (Syndicates) with new LRs 13.1 to 13.5 that, collectively:

- distinguish between ‘private’ (up to 20 members) and ‘public’ (up to 50 members) syndicates (although we understand the drafting of the rules to mean that, subject to complying with additional requirements of proposed LR 13.2.2 and LR 13.5.4 a syndicate that could otherwise be registered as a ‘private syndicate’ may be registered and operate as a ‘public syndicate’);
- require each type of syndicate to be registered with GRV;
- require, for *public* syndicates (but not private syndicates) a copy of a written syndicate agreement to be lodged with GRV on application for registration, with a declaration that each member of that syndicate has (among other things) accepted those terms and is not warned off or disqualified or suspended; and
- require each such syndicate to nominate a manager and an alternate manager (each of whom must be registered as an owner with GRV) who will be responsible for the administration of the syndicate and for exercising the powers and responsibilities of ownership vis a vis GRV; and
- allow members of ‘public syndicates’ to remain unregistered with GRV (private syndicate members will have to each be registered with GRV as an owner).

2.3 GOTBA Vic notes that the proposed rules do not appear to presently contemplate corporate members of syndicates or even corporate syndicate managers. This may need to change in future (we understand that this may have practical administrative impediments as well as raise concerns as to the identity of underlying controllers of that entity).

Specific comments – syndication rules

2.4 Our specific drafting or other comments on new LR 13 are as follows:

Proposed new Local Rule	Comment	Reason
<p>Definitions – Private Syndicate and Public Syndicate</p>	<p>Even noting the differing use of ‘Owner’ and ‘Member’, these definitions are in <i>substance</i> identical, and somewhat circular.</p>	<p>Consider a <i>public</i> syndicate where 2 of 30 members happen to be registered owners (ie the Syndicate Manager and Alternative Syndicate Manager, who must be Owners and are likely also to own shares in the syndicate in many instances), and 28 are not registered. On the proposed definitions that syndicate meets the definition both of a public syndicate and a private syndicate.</p>
<p>13.1.2(a) – Syndicates – general: restrictions on nomination or participation</p> <p>(see also related comment re LR 13.3.6)</p>	<p>(a)</p> <p><u>Issue one</u> - Greyhounds in a <i>public</i> (as opposed to private) syndicate must be permitted to be nominated and compete if a Member is disqualified, suspended etc after registration of the syndicate with GRV.</p> <p><u>Issue two</u> - Equally, if one (but not both) of either a Syndicate Manager or an Alternative Syndicate Manager (in either a public or private syndicate) becomes disqualified etc then the greyhound must still be able to be nominated and/or compete.</p> <p>(b)</p>	<p><u>Issue one</u> Nomination restrictions where a Member may be disqualified etc. are not appropriate in a public (as opposed to private) syndicate There are two main reasons:</p> <ol style="list-style-type: none"> 1. Other members may have absolutely no connection with that person, and should not suffer what may be a very significant consequence upon the disqualification etc of a third party. To do otherwise would defeat a purpose of public syndication and would alter a person’s property rights by reference to the actions of a third party. It is frankly unjust. 2. A syndicate manager will not be informed by GRV of the disqualification etc of a member; such a proposal

Proposed new Local Rule	Comment	Reason
	<p><u>Issue three</u> –</p> <p>(b) should say ‘both the Syndicate Manager and Alternative Syndicate Manager have been removed for any reason and no replacement of either or both has been approved by the Controlling Body in accordance with LR 13.3.6.’</p>	<p>cannot be properly planned for or addressed at short notice.</p> <p>The proposed restriction may have very serious consequences – eg a public syndicate greyhound in say a Melbourne Cup and one Member is suspended.</p> <p>One way to address the risk of a disqualified etc person benefiting from syndicate membership may be to require the syndicate agreement for a public syndicate to contain a term in which syndicate members cedes a right to payment or any voting/participation entitlement that they might have for so long as they are disqualified etc, and the syndicate manager / alternative syndicate manager covenants not to pay that person/allow participation during the DQ etc. However, that does not solve for the 2nd issue.</p> <p><u>Issue two</u> - Not permitting nomination or racing of a greyhound where only one of a Syndicate Manager or Alternative Syndicate Manager is disqualified etc defeats the point of having two separate appointments.</p> <p>(b)</p>

Proposed new Local Rule	Comment	Reason
		<p><u>Issue three</u></p> <p>See also comments on LR 13.3.6. The proposed rules should not give GRV a right to approve any <i>change</i> per se – a syndicate must be able to <i>remove</i> any manager without approval of GRV (eg for misconduct). Approval for appointment of a replacement is a different matter - see comments on LR 13.3.6.</p>
<p>13.2.2(a) Syndicates Registration – filing a copy of a syndicate agreement (public syndicates)</p>	<p>GOTBA Vic supports this rule, provided that it is not, in practice, GRV approving or otherwise commenting on the substance of syndicate agreements as a condition of registration approval, other than to ensure that in some form they cover the financial, animal welfare, ongoing management and other arrangements of the Public Syndicate, and that the terms do not lead directly to GRV rule breaches.</p>	<p>GOTBA Vic would be concerned if GRV used this rule (or LR 13.2.3-13.2.5) to review and comment on the terms of public syndicate agreements, unless those terms contemplated breaches of GRV rules.</p> <p>Such a review process would interfere in private arrangements and needlessly extend the registration process.</p>
<p>13.2.3 – 13.2.5</p>	<p>LRs 13.2.3 -13.2.5 (ability of GRV to require further information, absolute discretion to refuse registration applications (presumably including if an applicant otherwise complies with all relevant registration</p>	<p>While discretions are important, GOTBA Vic does not generally support provisions of the rules that provide open discretions or powers, as they provide an avenue for GRV to decline or</p>

Proposed new Local Rule	Comment	Reason
	<p>requirements; ability to impose conditions on registrations) – these are very broad.</p>	<p>restrict syndicates for reasons unknown or not stated on the face of the rules. Used in that way, they would not be fair.</p> <p>GOTBA Vic will monitor GRV’s use of these clauses if implemented.</p> <p><i>[GOTBA Vic note: When proposing rules of this nature, GRV should be publishing or identifying policies that apply to the consideration of the discretions.]</i></p>
<p>13.3.6: GRV approval of a change in Syndicate Manager or Alternative Syndicate Manager after initial registration</p>	<p>It is not appropriate for GRV to have the right to approve – or not – any and all <i>changes</i> in the identity of the Syndicate Manager or Alternative Syndicate Manager.</p> <p>That is, a syndicate must be free to remove a syndicate manager or alternate without needing GRV approval.</p> <p>An approval right for a replacement is a different matter. If GRV wishes to have an approval right for a replacement Syndicate Manager or Alternative Syndicate Manager, it should not be unrestricted: it should be expressed to be <i>not unreasonably withheld or delayed if the replacement</i></p>	<p>Once a syndicate – public or private – is operating, it is appropriate that any GRV right of approval is more limited.</p> <p><i>Removal</i> of a manager may be an important right of syndicate participants that should not require approval by GRV (eg if the manager is not carrying out his/her job in accordance with an agreement).</p> <p>Similarly, once up and running, any GRV approval right for a replacement syndicate manager / alternate should be more limited, and further conditions on the operation of the syndicate should not be imposed. Syndicate members should</p>

Proposed new Local Rule	Comment	Reason
	<p><i>manager is not disqualified, suspended etc.</i> Further conditions should not be imposed.</p>	<p>be entitled to expect approval of a replacement manager from GRV in the ordinary course (remembering, most likely, those syndicate members are likely to have already expended money in that situation).</p>
<p>13.5.1</p>	<p>GOTBA Vic does not agree that a public syndicate should be limited to 50 members maximum.</p> <p>There should not be a cap or it should be much higher than 50.</p> <p>If not now, then in the medium term, GRV will need to contemplate ‘Members’ including corporate entities.</p>	<p>Public syndicates can contain well more than 50 members (eg with involvement of say a local football club in a share in a greyhound, for example). As greyhound racing (hopefully) continues to grow, syndicates exceeding 50 members become even more likely.</p> <p>GOTBA Vic appreciates that there is an administrative issue here involved in GRV checking, if it so wishes (notwithstanding it requires the syndicate manager’s declaration in LR 13.2.2(b)), the participation status of, say, 150 syndicate members.</p> <p>GOTBA Vic still thinks this particular proposed limit is unwise and unnecessarily limiting.</p>

Submission – GOTBA Vic – Syndicates and Victorian Greyhound Racing Integrity Council

<i>Proposed new Local Rule</i>	<i>Comment</i>	<i>Reason</i>
13.5.4 - notifications	3 days to notify certain changes in public syndicates is short unless those changes can be simply noted on FastTrack. Suggest 7 days to allow for delivery by post if needed.	See comment.

3. New LR 38.3 – GRV and Club limitation of liability – Satisfactory trials

- 3.1 GOTBA Vic does not approve this proposed rule.
- 3.2 The proposed exclusion of liability, stated to exclude liability of either GRV or the relevant club for loss or damage arising from the conduct of a satisfactory trial, is not appropriate.
- 3.3 **First**, at least in so far as GRV itself is concerned, it is unnecessary and somewhat duplicative of LR 9.2.
- 3.4 **Second**, there is **no** justification for the rules of greyhound racing to be used to attempt to exclude a *club's* liability for the conduct of a satisfactory trial. At minimum, reference to Clubs should be removed. It ought not be the role of GRV as a public body to seek to exclude a (third party) club's liability vis a vis other participants. If, for example, the club is negligent and a person or a greyhound suffers injury and corresponding loss,¹ why ought any exclusion apply? Ordinary laws (eg Part X of the *Wrongs Act 1958* (Vic) relating to negligence) should apply.
- 3.5 **Third**, GRV is not a pure regulator with no involvement in the operational aspects of the sport. If it was, a blanket exclusion of its own liability might be justifiable as a matter of theory.
- 3.6 **Fourth**, the proposed liability exclusion (like the more general exclusion in LR 9.2) is of questionable effectiveness. If GRV is purporting to rely on contract in respect of this exclusion, in a 'contract' (the rules) that is standard form, then it is probably an unfair contract term and, ultimately, of limited or no practical enforceability.

4. LR 52 – GRV Integrity Council rule amendments

- 4.1 GOTBA Vic has no comments on amendments to LR 52.1.

¹ GOTBA Vic has seen multiple examples of this, such as dangerous catching pen construction or procedures that directly result in injury to greyhounds.