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RELEASE: GOTBA Vic comment on Greyhounds Australasia Rule changes 2018 - prohibited substance and treatment changes

The below relates to changes to Greyhounds Australasia Rules of Racing (**GARs**) made to have effect on and from 1 March 2018, in connection with prohibited substance definitions, the recording of treatments and certain other matters.

Rule changes – our general approach

In recent years, the rules of greyhound racing have been undergoing constant change. It is one of the reasons why participants feel beleaguered and, frankly, harassed.

While we at the GOTBA Vic are not opposed to changing rules, rule changes must be (1) truly necessary (2) clear and (3) fair. If they are, we will support them wholeheartedly (for example, new GAR 21A is fully supported and would be even if it didn't already apply in Victoria, as is the addition of norethisterone as an exempted substance).

However, with the two exceptions just noted, the proposed rules as amended are spectacularly bad and unfair. The prohibited substance definition as amended is an anathema to an industry that values integrity (a quality that applies both to industry participants and their regulators).

Comment 1: Regulators – GRV included - are not consulting properly on GAR changes and is GRV complying with its duties in making rules such as these?

Comment itself seems hardly worthwhile on GARs. These changes have been passed by GA. GRV and each other State regulator approved GA making them, even though participant comment was not sought or obtained on the changes *before* that approval.

Of course, GARs only become *effective* in Victoria when GRV, through its board, adopts them and that, we are told, has not yet happened. But we are not aware of one single previous occasion in Victoria where GRV has altered any GAR prior to adopting it as part of the Local Rules, or has chosen not to apply GARs already in place. GARs are expressly incorporated into the Local Rules in whole, without explicit amendment of any of them.

GOTBA Vic does not consider consultation after the fact – that is when GRV has already agreed to the changes at the GA level – as real participant consultation consistent with the spirit of GRV's statutory duty under s 75(ae) of the *Racing Act 1958* (Vic). That is so even though GRV did at least seek comment on the GAR changes after GA approval.

What is occurring here *feels* like a bureaucratic exercise, whose outcome is largely pre-determined. We'd like to be wrong.

And another thing*:* Ultimately, GRV – unlike GA - is a Victorian statutory body with especial responsibility and duty for fairness and transparency in making rules that are, in effect, delegated

legislation[1] (*unlike* in, say, horse racing). GRV is not free to simply agree to unnecessarily harsh or unfair rules, even if they come via GA and are adopted elsewhere in Australia. GRV, through its board, might not even be free to make or agree to rule changes, such as these, without passing those rules through a proper Victorian government drafting process required by other legislation. We do not know, if indeed that is required, if GRV has already run the process. If it has, then we would also doubt whether the present consultation process has any real meaning.

In any event, rules are not all about making a regulator's job easier to the detriment of participants.

Comment 2: prohibited substance definition: the height of unfairness

Not one good thing can be said about the GAR prohibited substance definition as amended.

It's best to be as direct as possible – the form of that amended definition is viciously unfair and inappropriate.

Why? Because the prohibited substance definition is now so deliberately broad and vague (sub-paragraphs (a) and (e) individually and together) that, on the face of the rule, almost any conceivable substance is prohibited**, including water and food** (and no exemption appears to apply to either…). Don't forget that other existing rules (eg GAR 84) already make it an offence in certain circumstances to possess 'prohibited substances'.

Every single greyhound competing in every single Event would have 'prohibited substances' in its system under the amended definition.

That is not a viable method of operation in either the public interest or that of greyhound racing generally. Can GRV, GA or any other regulator seriously be comfortable with the notion that, in last weekend's Australian Cup, for example, on the face of the proposed amended rule, all greyhounds involved technically would have had prohibited substances in their system?

We can *assume* why the changes are made: to ensure (to an even greater degree of confidence) that as yet unknown substances can be retrospectively caught in future by giving infinite flexibility to the controlling body to show that a(ny) tested substance is prohibited. Outrageously, that is done by banning everything,[2] even though, of course, GRV would not take action on every substance (but one does not know when it would take action, or why).

As far any argument of 'best practice' might be put, the *combined* drafting outcome of definition sub-paras (a)-(f) of 'prohibited substance' is nothing like what appears in horse racing considered as a whole or even in World Anti-Doping Association rules.[3] That is so even though new sub-paras (a) and (b), at least, are straight copies of ARR 178B(1) and (2).

[1] Noted recently in *Greyhound Racing Victoria v Anderton* [2018] VSC 64 (Zammit J) at footnote 1 and paragraph [90].

[2] It might be said that that is what the previous GAR definition of 'prohibited substance' (sub-para (a)) did anyway. Possibly, but we do not think so given the language used and the primacy in sub-para (a) of the 'central or peripheral nervous system or any part of *that system such as*…'. Anyway, that is no excuse now for maintaining a terrible rule when amending it. Even less an excuse for amending the definition now to remove any doubt about the extent of that coverage, and very definitely broadening it.

[3] Which is specification of a substance on a 'Prohibited List' instead of banning everything. Of particular note to us is the method by which WADA adds substances to its list of prohibited substances and the evidence that needs to be put forward to justify the same before this occurs – see 4.3 of the current WADA Code (2015).

In any event, horse racing and greyhound racing are completely different propositions, including as to the nature of the rules, the duties of those making them (as we noted previously above) and the profile of the wider body of participants. Not to mention the animal and the manner in which it races, which can have a variety of performance and welfare implications.

That another industry or code might have apparently similar rules is not a sufficient basis to cherry pick some of those rules with little or no published justification for doing so. Merely saying (as GA appears to) that 'in certain instances [the changes] will bring GA's Rules in line with other racing codes' is not good enough - even if it was actually true. Here, yes, *certain* rules are lifted from horse racing into greyhound racing, but on an apparently ad hoc basis, without considering necessary amendments and/or exemptions that apply in horse racing to those rules or how equivalents might apply in greyhound racing (see for example ARR 178C).

Ideally, the prohibited substance definition should simply contain a list of substances, updatable on short notice, but based on evidence when doing so, like the WADA Code.

Failing that, a regulatory system would need to be implemented that clearly expressed – in writing, known to everyone, and that binds GRV - when GRV would take action in respect of a substance that falls *only* within sub-para (a) or (e) of the prohibited substance definition. The prohibited substance regime as presently proposed cannot operate fairly otherwise, leaving too great a risk of a 'luckless victim'.

While we do commend GA for at least attempting to put some examples of sub-para (b) prohibited substances in a separate table by way of *explanation*, we do not think GRV will be answering questions on whether particular substances are prohibited by the rules if asked by a participant. No vet in their right mind would do so either.

For the present, yet again, it would be the general participant population that is compromised by rule changes– participants will be left constantly unsure of whether what they give to their greyhound may result in action against them. It is grossly unfair. It is a real burden and an active disincentive to participate.

Comment 3: Treatment records: the Cinderella Rule

The treatment record changes (84A(2)) seem designed solely to catch participants. The midnight treatment recording requirement is a variant of (horse racing) ARR178F. That does not make it right, or fair to apply across the entirety of the greyhound participant population. It has not been shown to be necessary to enforce the treatment records rule.

It should not be adopted.

A troubled conclusion

Looking at these rule changes (and previous ones too) doesn't leave us confident that those preparing these rules have any true regard for participants in the industry. GA does not consult participants before making new rules. GRV has not consulted before indicating its approval to these changes, at least to GA. This is the result of those failures.

We do not ask for everything our way – and we certainly want clean racing - but do require basic fairness and rules that can be fairly followed. Instead, we have amended rules designed, it seems, to make the jobs of highly funded and resourced regulators easier, with no regard to the detriment caused by those rules to the ordinary experience of the great majority of participants.

These rules changes are so poorly conceived that further action by greyhound racing participants may be necessary.

See also the Appendix for further comment.

GOTBA Vic Committee

8 March 2018

APPENDIX A: Comments – specific provisions;

Prohibited substance definition

(a) and (b) are copies of ARR 178B(1) and (2), right down to, in the latter case, 'vitamins administered by injection' (bearing in mind this rule is supposed to address the prohibition of substances themselves, not how they are delivered).

Why a straight copy is appropriate for greyhound racing is not evident (even though both horses and greyhounds are mammals), especially when carve-outs or exemptions applying in horse racing (ARR 178C) are not in the greyhound rules.

Water would be a prohibited substance in (a), as would any food – each has '…directly or indirectly…an action or effect…on the digestive system' (not to mention other systems referred to). To call a spade, a spade, (a) is utter nonsense. That doesn't change because some other body has that same rule.

Equally, in (e), no-one could possibly know what (emphasis added) '**unusual or abnormal amounts** of an endogenous, **environmental**, **dietary**, **or otherwise naturally present**, substance' means. This does not exist in horse racing rules.

In fairness, GRV should simply publish a list of prohibited substances, and update them as necessary.

We note, GRV, there remains no 'categorisation' of prohibited substances under the rules either.

Exempted substance - norethisterone

No comment. Supported.

GAR 83A(3)

This now restricts any injections being given to a greyhound – of anything – the day before that greyhound is scheduled to be competing in an Event, unless permission is received. Or even, according to the explanation, giving a greyhound a substance that is designed to be – but isn't – injected the day before an Event.

GA's rationale for such a broadly expressed restriction is spurious – it translates to 'injections bad [no matter what is in them], potential welfare implications'. There is no evidence provided of those welfare implications arising purely from an injection occurring. Regulators should not throw around 'welfare' rationale like confetti.

We can accept that banning injections the day before might reduce the likelihood of positive swabs from inadvertence. But so might banning injections 2 or 3 or 20 days before too.

We do not think the rule change is necessary or appropriate, on balance.

In any event, if the change remains – change the heading from 'Raceday treatment' to 'Raceday and day prior treatment'.

GAR 79A

No comment.

GAR 21A

Supported.

GAR 84A(2)

This change – requiring the relevant records to be written down by midnight on the day of treatment – is just ridiculous, designed ONLY to catch people out.

We know that the midnight recording requirement appears in ARR 178F. That does not make it right for the greyhound racing industry, where most participants do not have the luxury of administrative staff. Why not make this a more reasonable time – say 5 days - if a time must be inserted (which it doesn't – a decision maker is perfectly capable of deciding whether a person has or has not complied with GAR84A(2) regardless of whether there is a time in it)?

In any rational rule-making world this change should not have made it past a thought bubble.