The welfare of greyhounds in Australian racing: has the industry run its course?

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ABSTRACT

Australia's greyhound racing industry is reportedly the third largest in the world. Over fifty racetracks operate across the country, with the majority located in New South Wales. In 2009 the total 'stake money', that is, the amount put at risk by punters, was $73.774 million nation-wide. This article explores welfare issues in the greyhound industry, arguing that, despite recent regulatory reforms and industry efforts to improve welfare standards, there is sufficient evidence available to conclude that Australia should follow the lead set by the USA and begin dismantling a sporting industry which has run its course. In short, this form of animal use can no longer be justified as 'necessary'.

The authors accept that given the strength of the racing industry in Australia this position may be dismissed as politically untenable. While admittedly an aspirational position, it has validity, especially when considered in the context of developments in the USA where greyhound racing is now unlawful in most states. As background we touch on the history of greyhound racing and gambling in Australia. We then outline Australia's approach to the regulation of animal welfare law in the racing industry, using Queensland's and Victoria's regulatory systems as case studies. The discussion then turns to animal welfare issues relevant to greyhounds drawing on international and domestic sources. As an exemplar of animal welfare law reform, we recount the story of how pari-mutuel dog racing was eliminated in Massachusetts in 2008, via an indirect initiative ballot. The article concludes by identifying the elements driving law reform in the US and how this experience might inform legal advocacy in Australia.

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[4] This paper is dedicated from Krishna to Sri Skandakumar in appreciation of his ongoing support, and from Alex to *Dino* - rest in peace.

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I. INTRODUCTION

Of the 7,500 greyhounds born [in Victoria each year], approximately only 1,000 will live a full life span.
Judge G. D. Lewis AM, 1 August 2008[5]

Australia's greyhound racing industry is reportedly the third largest in the world.[6] Over fifty racetracks operate across the country, with the majority located in New South Wales.[7] In 2009 the total 'stake money' (the amount put at risk by punters) was $73.774 million Australia-wide.[8] Despite its popularity and profitability, the industry is faced with intractable animal welfare issues. In particular, industry viability rests on the over-breeding of dogs. Based on current estimates[9] it seems that in the vicinity of 17,000 greyhounds are killed in Australia each year, as pups, due to injuries sustained during racing, or as surplus dogs at the end of their racing 'careers'.[10] It is reasonable to assume that the market for the use of greyhounds in research,[11] for teaching in veterinary schools,[12] and as a live export

[5] Covering Letter to Honourable Rob Hulls MP, Minister for Racing, Victoria 1 August 2008 in Judge G D Lewis AM, *A Report on Integrity Assurance in Victoria's Racing Industry* (2008), 5.
[6] Lorna Edwards, 'Hounded to death ' *The Sydney Morning Herald* (Sydney), 25 October 2004, 19. According to Australia and New Zealand Greyhound Association figures, about 20,500 greyhounds were born in 2001, making Australia the world's third largest producer of racing dogs after the United States (32,000), and Ireland (23,000).World Greyhound Racing Federation, *Protests Mount Over Export of Racing Greyhounds to Korea Melbourne, Australia* (n.d). <http://www.worldgreyhoundracingfederation.com>.
Figures published by the *National Greyhound Association* (USA) for 2010 indicate that the number of greyhounds bred to race in 2010 was 12,801. It is therefore probable that Australia is now the second largest producer of greyhounds. National Greyhound Association, *For the Record* (2011) <http://abcpubproof.com/upload/2866/content/ForTheRecord.pdf>.
[7] Australia Greyhound Racing, *Race Tracks* (n.d.) <http://australiagreyhoundracing.com/greyhound-race-tracks/victoria-greyhound-tracks/>.
[8] Greyhounds Australasia, *Australasian Racing Statistics* (n.d.) <http://www.galtd.org.au/GreyhoundsAustralasia/index.php?q=node/111> .
[9] This estimate is based on 1) Covering Letter to Honourable Rob Hulls MP, Minister for Racing, Victoria 1 August 2008 in Judge G. D Lewis AM, *A Report on Integrity Assurance in Victoria's Racing Industry*, (2008) which notes that approximately 15% of greyhounds bred for racing in Victoria each year live a full life span and 2) The number of litters registered in Australia suggests that at least 20,000 dogs are bred each year, cited in Tim Mitchell, 'Less Breeding Best for Dogs' *Waverley Leader* (Melbourne), 16 August 2011,5. In view of these estimates, approximately 17,000 greyhounds are killed each year.
[10] Judge G.D Lewis AM above n 5, 5.
[11] Edwards, above n 6, 19.
[12] University of Queensland, *About Us* (2011) School of Veterinary Science Education Memorial Program, University of Queensland <http://www.uq.edu.au/vetschool/about-emp >.

'commodity'[13] has emerged in response to this ongoing over-breeding of dogs. While Greyhound Adoption Programs have flourished and are welcomed, based on estimates from Victoria, adoption 'saves the lives' of around 4 -5 % of the total number of animals in need of re-homing.[14]

As animals are property at law[15] they do not enjoy an inalienable right to life. Under current Australian anti-cruelty statutes,[16] killing a dog is not an offence unless the act of killing causes unnecessary suffering and pain. Jamieson notes that animal sports have remained contentious in the on-going debate as to the definition of the threshold test of 'necessity' as a qualification to the offence of animal cruelty[17] and the killing and the treatment of greyhounds in Australia seems to cut across a number of moral boundaries that are generally protected for other breeds. Even by conservative standards the magnitude of greyhounds killed each year is gratuitous and the corollary export industry is inconsistent with the way Australia has positioned itself as having an animal welfare leadership role in Asia, the Far East and Oceania.[18]

It is against this background that this article explores welfare issues in the greyhound industry arguing that, despite recent regulatory reforms and industry efforts to improve welfare standards, there is sufficient evidence available to conclude that this form of animal use can no longer be justified as 'necessary'. The authors accept that given the strength of the racing industry in Australia this position may be dismissed as politically untenable. While admittedly an aspirational position it has validity, especially when considered in the context

[13] Alison G Jones, 'Australia's Damaging International Trade Practice: The Case Against Cruelty to Greyhounds' (2005) 14 *Pacific Rim Law & Policy Journal* 677.
[14] Judge G.D. Lewis AM above n 5, 5; Greyhound Adoption Programs: Victoria (www.gap.grv.org.au), New South Wales (www.gapnsw.org.au), Queensland (www.greyhoundpets.org.au), Tasmania (www.gaptas.org.au), Western Australia (www.greyhoundsaspets.com.au), South Australia (www.gapsa.org.au), Australian Capital Territory (www.communitiesonline.org.au/group.php?id=386).
[15] Steven White 'Exploring Different Philosophical Approaches to Animal Protection in Law' in Peter Sankoff and Steven White (eds), *Animal Law in Australasia* (The Federation Press, 2009), 79.
[16] *Animal Welfare Act 1992* (ACT); *Prevention of Cruelty to Animals Act 1979* (NSW); *Animal Welfare Act 1999* (NT); *Animal Care and Protection Act 2001* (Qld); *Prevention of Cruelty to Animals Act 1985* (SA); *Animal Welfare Act* 1986 (Tas); *Prevention of Cruelty to Animals Act 1986* (Vic); *Animal Welfare Act 2002* (WA).
[17] Philip Jamieson, 'Duty and the Beast: The Movement in Reform of Animal Welfare Law' (1991) 16 *University of Queensland Law Journal*, 238.
[18] Jones, above n 13, 678; World Organisation for Animal Health, *Regional Animal Welfare Strategy: Asia, the Far East and Oceania* (2008), 3.

of developments in the USA where greyhound racing is now unlawful in most states. It is apposite to note that much of the current debate regarding greyhound welfare in Australia takes place in grey literature. We found very little peer-reviewed Australian legal scholarship on animal welfare in the greyhound racing industry and neither of the recent Animal Law textbooks published in Australia deal with the issue in any detail.[19] By making this contribution we aim to mark the welfare of greyhounds in the context of the gambling industry as an important Animal Law topic in need of further attention and debate by legal academics.

By way of background we touch on the history of greyhound racing and examine how the welfare of greyhounds sits within the context of the gambling industry. The discussion then turns to Australia's regulatory approach, drawing upon examples from Queensland and Victoria's racing regulatory system. To sensitise readers to the notion that 'change is possible' we recount a story of law reform in the State of Massachusetts, USA, where the enactment of the *An Act to Protect Greyhounds*[20] achieved through the process of an 'indirect initiative',[21] banned pari-mutuel greyhound racing,[22] effective from January 2010. We conclude by identifying some of the elements driving law reform in the US and the UK and consider how these experiences might inform legal advocacy in Australia.

II. BACKGROUND

A. NOTES ON THE HISTORY OF GREYHOUND RACING IN AUSTRALIA

Greyhounds arrived in Australia with the First Fleet and were initially used for their ability to catch live game. Racing began to be conducted as coursing events in the 1860s, using live

[19]Deborah Cao, *Animal Law in Australia and New Zealand* (Lawbook, 2010); Peter Sankoff and Steven White (eds) *Animal Law In Australasia: A New Dialogue* (Federation Press, 2009).
[20] Chapter 388, 2008, Mass Acts.
[21] This provides for citizens of the State of Massachusetts to initiate legislation by way of petition.
[22] 'Pari-mutuel Betting is a system where all bets of similar types are placed together, and a commission removed before calculating a payoff odd for the winning bet against the entire pool of money.' R M Griffith, 'Odds Adjustments by American Horse-Race Bettors', (1949) 62 (2) *The American Journal of Psychology* 290.

wallabies as bait.[23] A decade or so later, live hares were imported to promote the 'sport' and by the 1880s coursing was organised on enclosed courses with patrons paying admission charges to watch and bet on the events.[24]

In the late 1920s Owen Smith commercialised greyhound racing in the United States by establishing the first racing track.[25] As the 'sport' gained patronage, practices on the race track changed. Each dog was placed into a box at the start of the track and enticed to chase an artificial lure, known as a 'tin hare'.[26] Although the greyhound is recognised as a placid breed,[27] it was for its blistering straight line speed that the dog was chosen for commercial racing. The greyhound racing industry exploded in America, and several other countries followed suit. New Zealand, Australia, Ireland, Spain and England embraced track racing schemes in the early 20th century. Today, there are over fifty greyhound race tracks in Australia.[28] In 2009 the total 'stake money' (the amount put at risk by punters) was $73,774 million nation-wide.[29] Although the industry gained some benefit from the growth of Totalisator Agency Board (TAB) and broadcast coverage in the late 1990s, greyhound racing remains the least favoured of the three racing codes (thoroughbred, harness, and greyhound) in betting, attendance and general public interest.[30] It is considered the 'poor cousin' of the other codes 'when it comes to the distribution of TAB revenues'. Nowadays the sport is largely 'restricted to a relatively small band of devotees'.[31]

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[23] Australian Institute for Gambling Research, *Australian Gambling Comparative History and Analysis: Project Report*, (Australian Institute for Gambling Research University of Western Sydney for Victorian Casino and Gaming Authority, 1999), 82.
[24] Ibid.
[25] Paul Tracey, 'Going to the Dogs! Labor and "Tin Hare" Racing' (Winter 1998) 2 *The Hummer* 10.
[26] Linda Beer, Jan Wilson, and John Stephens, 'Improving the Welfare of the Racing Greyhound – A GRV Perspective' (paper presented at the International Animal Welfare Conference, Queensland, 31 August to 3 September 2008);Tracey, above n 25.
[27] A study by The Centre for the Interaction of Animals and Society (University of Pennsylvania School of Veterinary Medicine) found that the greyhound is rated the most docile or least aggressive dog by breed. Kevin Pitstock, 'Research Finds Greyhounds Are The Safest' *Australian Racing Greyhound* 8 July 2008. <http://www.australianracinggreyhound.com/australian-greyhound-racing/animal-welfare-australian-greyhound-racing/research-finds-greyhounds-are-the-safest/2036>.
[28] Australia Greyhound Racing, above n 7.
[29] Greyhounds Australasia, above n 6.
[30] Australian Institute for Gambling Research, above n 23, 83.
[31] Ibid.

B. GREYHOUND RACING AND THE UTILITARIAN CALCULUS: WHY THE SCALES FALL IN FAVOUR OF THE INTERESTS OF ANIMALS

Australia's current animal welfare framework and anti-cruelty laws constitute a form of 'legal welfarism' by which the scope of protection provided to animals is determined by the types of conduct that will maximize the efficient use of animals as property.[32] The *Australian Animal Welfare Strategy* (*AAWS*) identifies six key categories of animal use:

1. livestock and production animals
2. companion animals
3. aquatic animals
4. animals used in research and teaching
5. animals used for work, recreation, entertainment and display
6. native, introduced, and feral animals.[33]

Greyhounds in the racing industry fall within category 5 'animals used for work, recreation, entertainment and display' and are considered working dogs in sport for the purposes of the *AAWS*.

The animal welfare paradigm accepts human use of animals, though tempers this stance by conceding that the animals involved should be treated humanely. This utilitarian approach allows for animal use on the basis that the pain and suffering endured by non-human animals may be justified or necessary where it is perpetrated in pursuit of a socially recognised human benefit or as Webster puts it 'by the perceived need of society as interpreted by our legislators'.[34] It is via this balancing act and ultimately the side on which the scales fall that specific forms of animal use and associated practices are imbued with legitimacy. The question of whether animal use is for a legitimate purpose generally accords with a hierarchy in which animal use for food and research has strong moral claims.[35] Although contestable, it is conventional to justify these forms of animal use by tying them to questions of life and

[32] Gary Francione, *Animals, Property and the Law* (Temple University Press, 1995) 253; Seymour, George, 'Animals and the Law: Towards a Guardianship Model' (2004) 29 *Alternative Law Journal* 183.
[33] Commonwealth of Australia, *Australian Animal Welfare Strategy and National Implementation Plan* 2010 - *14*, (Department of Agriculture, Fisheries and Forestry, 2011) 8.
[34] John Webster, 'Animals for Sports' in *Animal Welfare: Limping Towards Eden* (Blackwell Publishing, 2005) 205.
[35] Ibid.

death for the human species. In comparison, animal use for non-essential purposes such as entertainment, sport, or luxury items, has a weaker moral claim.

Having stated the orthodoxy it remains possible to reassess whether, over time, a given form of animal use may have lost its legitimacy according to the utilitarian calculus. This paper takes as its premise that the killing and mistreatment of greyhounds in the racing industry can no longer be considered legitimate. In particular, the viability of the Australian greyhound racing industry requires the large-scale killing of greyhounds each year, either as pups, as a result of injuries sustained on the race track, or as surplus dogs at the end of their racing 'careers'.[36] The over-breeding and large-scale killing of greyhounds can be construed as gratuitous killing for sport or entertainment. The export of live greyhounds raises the broader question of Australia's accountability for animal welfare standards post-export.[37]

In addition to direct welfare concerns, there are broader social factors that lend gravitas to the argument against the legitimacy of the greyhound racing industry. Firstly, gambling, in all its forms, is recognised as a significant social harm[38] and the racing industry has been plagued with problems of integrity. Finally, according to media reports, it would appear that the industry is beset by a culture of violence and inappropriate behaviour. Given the emerging evidence of correlations between interpersonal violence and that perpetrated by humans towards other animals,[39] it is difficult to imagine that such a milieu would support adequate standards of welfare for greyhounds, the most vulnerable beings involved in the sport. When considered as a whole these factors tip the scales against the legitimacy of racing and unequivocally in favour of the interests of greyhounds.

Although the argument above does not directly challenge animals' status as property as the fundamental problem underlying the license to mistreat or kill large numbers of animals in the name of sport, it does have two specific strengths. It locates the large-scale killing and

[36] Judge G.D. Lewis, above n 5, 5.
[37] See Jones, above n 13 for an in-depth discussion of this issue.
[38] Productivity Commission, 'Overview' in *Gambling: Productivity Commission Inquiry Report Volume 1* (50), 26 February 2010, 10-12.
[39] See for example, Frank R Ascione, 'Animal Abuse and Youth Violence' (2001) 1 *Juvenile Justice Bulletin* 1; Frank Ascione, (ed) *The International Handbook of Theory and Research on Animal Abuse and Cruelty* (Purdue University Press, 2008).

mistreatment of greyhounds as the end point of a particular form of structural violence,[40] in which the exploitation of those at risk of harm from gambling, problems related to integrity and violence are inextricable elements of a system that ultimately impacts dogs as end-point victims. In this way it considers harm in terms of inter-species inter-dependency: the interests of humans and animals are intertwined rather than dichotomous. They need not sit on opposing sides of the utilitarian scales. We now turn to briefly focus on these broader factors. Practices directly affecting greyhound welfare will be discussed later, within the context of Queensland's and Victoria's racing regulatory schemes.

1. *Gambling as a social harm*

Despite the romanticism associated with the colour, movement, and thrill of a day at the races, gambling, in all its forms, is recognised as a significant social harm. This reality has been difficult to come to terms with as racing is a deeply embedded cultural institution in Australia. It has also been a lucrative source of taxation for State and Territory governments for nearly a century.[41] Indeed, between the 1970 and the 1990s each State and Territory government owned its respective off-course Totalisator Agency Board (TAB).[42] The TABs coordinated betting for all of the racing codes and during that period generated the highest gambling revenue for State and Territory governments.[43] However, by the 1990s community attitudes towards gambling had changed.[44] State and territory governments were criticised for their contribution to gambling as a social harm.[45] In response, all but Tasmania, Western Australia, and the ACT moved to privatise their TABs. The move to ownership by large corporations, such as *Tattersall*s and *TAB Corporation Holdings*, saw the convergence of gaming and wagering betting activities, including greyhound racing.[46] State and Territory

[40] 'Structural violence' refers to violence that is perpetrated indirectly, through systems. The concept attempts to provide a framework for the study of the machinations of oppression. See for example, Paul Farmer, 'An Anthropology of Structural Violence' (2004) 45 (3) *Current Anthropology* 305, 307.
[41] Productivity Commission, 'Developments in the Racing and Wagering Industries' in *Gambling: Productivity Commission Inquiry Report Volume 1* (50), 26 February 2010, 16.2
[42] Australian Institute for Gambling Research, above n 22, 91.
[43] Ibid, iii.
[44] Ibid, vii; Productivity Commission, above n 41, 16.4.
[45] Australian Institute for Gambling Research, above n 23, 95.
[46] Ibid, vii.

governments continue to have a substantial interest in the viability of the gambling industry. For the 2008 -2009 year gambling provided 10% of all state revenue ($5 Billion).[47]

The liberalisation of gambling that occurred during the 1990s had a significant adverse affect on many Australians and their families.[48] The social cost of problem gambling is estimated to be at least 4.7 billion per year.[49] The number of problem gamblers is estimated to range from 115,000 with those categorised as at moderate risk number in the vicinity of 280,000'.[50] In referring to 'harm' it is important to recognise this as a phenomenon extending beyond the extreme problems experienced by a few.[51] For example, in Australia, the absolute number of non-problems gamblers experiencing some form of harm as a result of gambling is high[52] and estimates of people directly affected do not take account of the 'ripple effects' of problem gambling.[53]

The gambling industry points to employment as one of the key benefits it provides to the community.[54] However the Productivity Commission's (the *Commission*) recent inquiry into gambling found that these jobs were 'not additional in a net sense'.[55] Further, 'were Australia's gambling industries smaller, most people would be employed in other industries'. The *Commission* concluded that longer term employment effects of the gambling industry were likely to be negligible.[56]

2. *Integrity issues*

Over the past decade the racing industry's credibility has been undermined by problems of integrity. In August 2008 His Honour, Judge G. D Lewis, submitted a report on integrity assurance (the *Lewis Report*)[57] to the then Victorian Minister for Racing. During the same

[47] Productivity Commission, above n 38, 6.
[48] Productivity Commission, above n 38, 2.
[49] Ibid,
[50] Ibid.
[51] Productivity Commission, above n 38, 18
[52] Ibid.
[53] Productivity Commission, above n 38, 16.
[54] For example, Queensland Racing Limited, *Queensland Racing Annual Report 09*, 20.
[55] Productivity Commission, above n 38, 10.
[56] Ibid.
[57] Judge G D Lewis AM, *A Report on Integrity Assurance in Victoria's Racing Industry* (2008).

period, barrister Malcolm Scott chaired an independent Review of integrity in the racing industry in NSW (the *Scott Review*).[58]

(a) The Lewis Report

The catalyst for the *Lewis Report* was the betting activities of Mr Stephen Allanson, Former Chief Executive, Racing Victoria Limited (RVL). In February 2008 Mr Allanson tendered his resignation in the wake of revelations that he had provided false information to the RVL Chairperson and Director of Integrity Services in relation to credit bets he had placed with a Victorian licensed bookmaker using the pseudonym 'Jack Hindon'.[59] The investigations revealed 'a deliberate and systematic approach to the placing of 692 bets during the period 2003 – 2007'.[60] In addition, there had been unacceptable delays in reporting the matter appropriately within the RVL governance structure; 'if it had not been for the involvement of two unrelated parties outside RVL' it was unclear as to how the matter would have been made public.[61]

During Report consultations, Judge Lewis was made aware of 'many significant matters relating to criminal activity within the racing industry'.[62] Following examination of an anonymised Australian Crime Commission (ACC) report, His Honour was convinced that 'criminal activity in the industry was rampant'.[63] The *Lewis Report* made a range of recommendations including the establishment of an independent Racing Integrity Commissioner, with stand alone and independent statutory powers, and a scheme for consistent drug screening of animals.[64] In September 2009 the Victorian Government enacted the *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009* (Vic) in order to implement Judge Lewis's key recommendations.[65]

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[58] Malcolm Scott, *2008 Independent Review of the Regulatory Oversight of the NSW Racing Industry: Report*, (June 2008).
[59] Office of Racing, *Report on Betting Activities of Stephen Allanson Former Chief Executive Officer, Racing Victoria Limited and Related Issues* (March 2008) 1.
[60] Ibid, 1.
[61] Office of Racing, above n 59, 5.
[62] Judge G. D Lewis AM, above n 57, 7.
[63] Ibid,11.
[64] State of Victoria, *Implementation the Recommendations Arising from the Review of Integrity Assurance in Victorian Racing Industry by Judge Gordon Lewis AM* (n.d.).
[65] State of Victoria, *The Office of the Racing Integrity Commissioner*, Office of Racing Integrity Commissioner, (2010) <http://www.racingintegrity.vic.gov.au/home>.

(b) The Scott Review

In November 2007 the NSW Minister for Gaming and Racing appointed barrister Malcolm Scott to chair a Review to examine whether the relevant industry control bodies had adequate powers and procedures in place to provide effective and efficient regulatory oversight of the three codes of racing.[66] In relation to the greyhound industry an important part of the background context for the Review was the Independent Commission Against Corruption's (ICAC) *2000 Greyhound Report – Investigation into Aspects of the Greyhound Industry* which found that 'the Chief Steward had acted corruptly by helping to fix races in collusion with certain owners and trainers'.[67] Recommendation 11 of the ICAC Report stated:

> *That the GRA review its policies and procedures to ensure that overlap between the regulatory and promotional aspects of its operations are minimised to as great an extent as possible, that relationships between staff and industry participants are appropriate, and that conflicts of interests are properly identified and managed when they arise.*

Nearly a decade later the *NSW Audit Office Report*: *Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority* (March 2008)[68] suggested that little had changed. The Report noted the tension between 'integrity' and 'viability' for the racing industry and the pressure to 'remain competitive in the face of declining participation levels'.[69] As a result the industry was torn between 'maximising the use of funds to make the code as attractive as possible…while maintaining confidence in the viability of racing.'[70]

(c) Review outcomes

Although the focus of the Scott Review and Lewis Report was NSW and Victoria respectively, the recommendations had an impact beyond their originating jurisdictions. Among other things, they led to amendments to the *Greyhound Australasia Rules*, which have been adopted by State and Territory greyhound racing control bodies. The amendments concentrated on drug screening, including specimen collection and analysis, procedures to

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[66] Covering Letter from Malcolm Scott to The Honourable Graham West MP, 4 June 2008 in Malcolm Scott, *2008 Independent Review of the Regulatory Oversight of the NSW Racing Industry: Report*, (June 2008).
[67] Scott, above n 58, 4.
[68] Cited in Scott, above n 58, 7.
[69] Ibid.
[70] Ibid.

support accurate animal identification, and breeding. Although the purpose of these reforms was to improve integrity standards for punters, there is no doubt that such changes have also benefited the welfare of animals in the racing industry.

3. *Bad Behaviour on the Racecourse*

As well as issues of integrity, some greyhound racing industry participants, including trainers, stewards, and club officials, have been criticised for a propensity for bad behaviour and violence. Judge Lewis's finding that criminality was rampant in the industry suggests that violence and intimidation might form a thread running through the industry's culture. There has been coverage of this issue within the racing industry media. An article published in *Australian Racing Greyhound* in August 2009 alleged that the prior 18 months had seen a 'dramatic increase in instances of misconduct seen on Australian greyhound tracks'.[71] The incidents cited included:

- Abuse and physical altercations between trainers;
- Abuse directed towards racing stewards;
- Club officials embroiled in missing swab controversies;[72]
- Trainers abusing state regulatory authority staff by email;
- Media personalities and club stewards being involved in physical altercations; and
- Trainers being involved with physical and verbal altercations with their own owners.[73]

The author noted that this trend had emerged in the context of authorities beginning to tighten drug testing procedures and analysis. The article called for improved transparency within the industry in relation to publication of steward inquiry results and appeals, 'including one involving a full time trainer and 'live rabbits'.[74]

Inappropriate behaviour at race tracks was also raised in the *Scott Review*. These concerns centred on members of the public moving in an unauthorised way on to the race track on race

[71] Kevin Pitstock, 'Greyhound Racing in Chaos as Crime Runs Rampant' *Australian Racing Greyhound* (online), 17th August 2009, <http://www.australianracinggreyhound.com/australian-greyhound-racing>.
[72] See for example, Kevin Pitstock, 'GHRRA Deliver Open Finding Against GBOTA Deputy Chairman' *Australian Racing Greyhound* (online), 2 April 2009. <http://www.australianracinggreyhound.com/australian-greyhound-racing/new-south-wales-greyhound-racing/ghrra-deliver-open-finding-against-gbota-deputy-chairman/11594> .
[73] Pitstock, above n 71.
[74] Ibid.

days and the risks to the safety of animals, jockeys or drivers that this entailed.[75] Scott recommended that 'due to the extreme level of danger and the potentiality of fatal injury,' an appropriate maximum penalty for this behaviour would be 100 penalty units and/or a period of imprisonment.[76]

III: REGULATION OF GREYHOUND WELFARE IN AUSTRALIA'S RACING INDUSTRY

A. *AUSTRALIAN ANTI-CRUELTY LEGISLATION*

Australian States and Territories have primary jurisdiction for the preparation and enforcement of anti-cruelty legislation.[77] Although cruelty to a live animal is a criminal offence, killing an animal is not unlawful per se.[78] Killing or authorising the killing of an animal by the animal's owner constitutes lawful disposal of property, as long as the pain and suffering inflicted on the animal during the act of killing does not amount to cruelty.[79]

B. *REGULATION OF ANIMAL WELFARE IN THE RACING INDUSTRY*

In Australian States and Territories animal welfare for the racing codes is regulated under industry specific legislation (See Appendix A for a summary of the relevant State and Territory legislation). Within this scheme, Greyhound Australasia publishes the Rules of Greyhound racing and many of these are adopted, via resolution, into State or Territory Local Rules.[80] Local Rules take precedence over Greyhound Australasia's Rules.[81] Queensland and Victoria's regulatory systems are representative of the current Australian approach.

1. Queensland

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[75] Scott, above n 58, 29.
[76] Ibid.
[77] Commonwealth of Australia, *The Australian Animal Welfare Strategy and National Implementation Plan 2010 - 2014* (2011), 15 <http://www.daff.gov.au/__data/assets/pdf_file/0004/1986223/aaws-nip.pdf> .
[78] Malcolm Caulfield, *Handbook of Australian Animal Cruelty Law* (Animals Australia, 2008) 139.
[79] *Prevention of Cruelty to Animals Act 1985* (SA); *Animal Care and Protection Act 2001* (Qld); *Animal Welfare Act* 1986 (Tas); *Animal Welfare Act 2002* (WA); *Animal Welfare Act 1992* (ACT); *Animal Welfare Act 1999* (NT); *Prevention of Cruelty to Animals Act 1979* (NSW); *Prevention of Cruelty to Animals Act 1986* (Vic), Caulfield, above n 78, 18.
[80] *Greyhound Australasia Rules*, Rule 8 (01/01/2011).
[81] *Greyhound Australasia Rules*, Rule 7 (01/01/2011).

Queensland has 7 greyhound racing venues.[82] The State's primary anti-cruelty statute, the *Animal Care and Protection Act* (2001) (Qld) (*ACPA*) does not affect the application of the *Racing Act 2002* (Qld).[83] Hence, a person who lawfully does an act or makes an omission authorised under the *Racing Act 2002* (Qld) that would constitute an offence under the *ACPA*, is taken not to commit the offence by reason only of doing the act or making the omission.[84]

The *Racing Act 2002* (Qld) requires that *Racing Queensland Limited (RQL)* have a policy for the welfare of licensed greyhounds.[85] The *Racing Queensland Local Rules of Racing* (the *Qld Rules*)[86] provide for the application of *RQL*'s *Animal Welfare Policy*.[87] The industry's rules and policies are statutory instruments.[88] The *RQL Animal Welfare Policy* (the *Policy*) covers animals while they are racing, training and undertaking activities associated with racing or training.[89] Under this policy, which is limited in its scope to licensed animals, *RQL* undertakes to 'investigate allegations of cruelty to registered animals' and may 'institute disciplinary action against a person found to be treating animals cruelly'.[90] For 'serious breaches of animal welfare' industry integrity officers are responsible for referring acts of cruelty to the Royal Society for the Prevention of Cruelty to Animals (RSPCA) for investigation and possible prosecution. Although the *Policy* adopts the *ACPA* meaning of cruelty, it goes on, tautologically, to state that 'activities that are permitted under the Act and/or the rules of racing will not be considered acts of animal cruelty'. The blanket exemption from the *ACPA* for acts or omissions under the *Racing Act* implies that some practices that are currently lawful under the Rules would otherwise amount to cruelty. Further it is unclear as to what amounts to a 'serious breach': would this amount to an act of aggravated cruelty under *ACPA*? How are these standards measured and how is consistency maintained in relation to what amounts to a breach and the seriousness thereof?

[82] Greyhound Racing < http://www.racingqueensland.com.au/greyhounds.aspx> .
[83] *Animal Care and Protection Act 2001* (Qld) s 7(1)(c).
[84] *Animal Care and Protection Act 2001* (Qld) s 7(2).
[85] *Animal Care and Protection Act 2001* (Qld) s 81(s).
[86] Racing Queensland Limited, *Local Rules of Racing (Greyhound Racing)* (2011).
[87] Racing Queensland Limited, *Animal Welfare Policy* (July, 2010).
[88] Within the meaning of the *Statutory Instruments Act 1992* (Qld), *Racing Act* 2002 (Qld) s 79.
[89] Racing Queensland Limited, above n 87, 1.
[90] Racing Queensland Limited, above n 87, 3.

The *Policy* refers to several Rules as having been made for the policy. Hence, responsibility for animal welfare compliance is shared in some respects by integrity officers and stewards. Under the *Racing Act* Stewards are responsible for ensuring compliance with the Rules. It appears that Stewards' primary responsibility is the conduct of race days and on these days the attending Steward would be responsible for investigating, prosecuting and adjudicating animal cruelty offences, for example if there is an incident of cruelty on the day. Beyond this, Rule 27 deals with minimum kennelling standards for greyhounds, including details such as the provision of clean water. This extends a steward's responsibilities to kennel inspections and thus the day-to-day care of dogs.

The Scott Review was critical of the traditional role of the Steward as investigator, prosecutor and adjudicator of breaches to the Rules, stating that

> *Leaving aside matters of law and issues of natural justice, there is a lingering perception that it is inappropriate for the same person to gather evidence, bring a charge based on the evidence and determine the charge based upon that prosecution.*[91]

As acts or omissions amounting to cruelty are criminal offences under the *ACPA* with possible maximum penalties of 2 years imprisonment it seems that separating these roles would improve natural justice for the defendant. Further, given that greyhound victims are unable to advocate for themselves directly, it would also improve standards of integrity (and animal welfare) by protecting stewards against potential undue influence towards leniency for welfare related breaches of the Rules.

In the current system some steward's decisions can be appealed to the Racing Appeal Tribunal, constituted under the *Act*.[92] However, it is also true that within the current system an appeal would only be made on the part of the defendant. The steward, as adjudicator, would not appeal his or her own decision, for example, for leniency. Hence there is no way of testing whether the penalties imposed reflect the seriousness of the breach, as the prosecution has no means of appeal on behalf of the victim - the greyhound. Certain decisions, such as a

[91] Scott, above n 58, 16.
[92] *Racing Act 2002* (Qld) s 95.

disciplinary action related to a licence,[93] can be the subject of appeal to the Queensland Civil & Administrative Tribunal (QCAT).[94] The authors were unable to locate any QCAT decisions relating to animal welfare or any prosecutions by RSPCA Queensland relating to greyhounds. This absence of prosecutorial activity may reflect high standards of compliance with the Rules, a chronic lack of referral of possible cruelty offences to the RSPCA, low levels of prosecution post referral, or a pervasive lack of enforcement?

2. Victoria

Victoria has 13 registered greyhound race tracks.[95] The industry is regulated under the *Racing Act* 1958 (Vic). Unlike the *ACPA* in Queensland, the *Prevention of Cruelty to Animals Act 1986* (Vic) (*PCTAA*) does not provide a blanket exemption for acts or omissions under the *Racing Act*. The *PCTAA* provides that, in relation to the treatment and management of animals (other than a farm animal or class of farm animals) *PCTAA* does not apply, except to the extent that it is necessary to rely upon a Code of Practice as a defence. [96]

Under the *Racing Act 1958* (Vic) RVL is responsible for 'regulating the registration, breeding, kennelling of greyhounds for greyhound racing'.[97] Welfare is not explicitly mentioned in the *Racing Act 1958* (Vic). However, complaints about the conduct of any registered person or about the welfare of a greyhound are dealt with under the Rules[98] and stewards are charged with enforcing the Rules. Local Rule 42 deals specifically with greyhound welfare. A breach of the welfare rule is an offence. Several Rules are deemed Serious Offences. Rule GAR 106(3) requires the last registered owner of a greyhound to advise the board if the dog is to be retired as a pet, a breeding greyhound, a Greyhound Adoption Program greyhound, or has been humanely euthanised by a veterinarian. A failure to notify is a serious offence, attracting a maximum penalty of 400 penalty units (1 unit = $50: a total fine of $2,000).

[93] *Racing Act 2002* (Qld) s 150 (1)(a)(ii).
[94] *Racing Act 2002* (Qld) s 150.
[95] Greyhound Racing Victoria, 'Clubs', (n.d.) <http://www.grv.org.au/Clubs.aspx>.
[96] *Prevention of Cruelty to Animals Act 1986* (Vic) s 6(1)(b).
[97] *Racing Act 1958* (Vic) s 77 (1)(da).
[98] Greyhound Racing Victoria, *A Code of Practice for the Greyhound Industry Dealing with Greyhound Premises and the Keeping and Welfare of Greyhounds* (March 2008) 5.

Appeals from stewards' decisions are heard by the Racing Appeals and Disciplinary Board, with appeals from the RADB going to the Victorian Civil and Administrative Tribunal (VCAT).[99] VCAT has affirmed that it can hear appeals as to matters arising from a steward's decision.[100]

C. Documented welfare issues in the Australian greyhound racing industry

In preparing this article the authors found little information in the public domain reporting failures to meet welfare standards, such as details and penalties breaches for Rules, the number, nature and outcomes of injuries sustained on the race track, kennel inspection reports, or the number of cruelty matters referred to the RSPCA by officers responsible under State and Territory legislation. Where information was available it was reported in ways that made it difficult to confidently portray an accurate or consistent cross-jurisdictional picture. To some extent this observation reflects the Animals in Work, Recreation, Entertainment and Display *AAWS* Working Group Review finding that 'the dispersed nature of the groups involved in the sector made the monitoring of Rules and Codes developed by "peak industry bodies" difficult to undertake'.[101] With the exception of the excerpts from the *Lewis Report*, the following summary is therefore limited in that it does not present an analysis of original data. It does however convey what have been identified as key greyhound welfare issues in Australia's racing industry.

In addition to noting the difficulties associated with monitoring of Rules and Codes a Animals in Work, Recreation, Entertainment and Display *AAWS* Working Group review, conducted in 2006, identified the following weaknesses in Australia's regulation of welfare of animals in this category:

- A lack of legislation pertaining to animals in Work, Recreation, Entertainment and Display activities;

[99] *Racing Act 1958* (Vic) ss 83B, 83OH.
[100] *Atkinson & Burns v Greyhound Racing Victoria* [2003] VCAT 1046 (21 August 2003).
[101] Steve Atkinson, *AAWS Animals in Work Sport Recreation and on Display: Review of Existing Animal Welfare Arrangements: Executive Summary* (2006) 7.

- That existing animal welfare legislation was considered by some to be relatively ineffective;
- There were little formal training systems within the sector;[102]
- In relation greyhound racing, the 'hobby nature' of the industry was identified as the greatest barrier to addressing animal welfare.[103]

RSPCA Australia has raised the following concerns:

- The lack of comprehensive regulation of the greyhound racing in relation to breeding, rearing, training and competition;
- Hurdle racing which involves a high risk of injury;
- The level of over-breeding and oversupply of greyhounds in the industry, indicated by the high level of 'wastage' of greyhounds, specifically those that are bred for racing but do not go on to compete;
- That a large proportion of dogs 'that are deemed unsuitable for competitive racing, become injured, or are simply not considered fast enough, are euthanased'.[104]

1. Large scale killing

The Lewis Report reported on integrity assurance in the Victorian Racing Industry. For this purpose integrity was restricted to encouraging fair competition and protecting the primarily the owner, trainer and the punter from corrupt practices at any level.[105] This notwithstanding, His Honour went outside the Review terms of reference to make a point about the large scale killing of greyhounds in Victoria. It is appropriate to quote Judge Lewis at length:

> *Among the responsibilities of Greyhound Racing Victoria is licensing and registration.*
>
> *GRV endorses the safety and welfare of greyhounds through the GAP[Greyhound Adoption Program]. However, this program is extremely limited in placing in a domestic environment*

[102] Nik Branson, Mia Cobb and Paul McGreevy, *Australian Working Dog Survey Report 2009*, (Commonwealth of Australia, 2010) 15; Atkinson, above n 101, 7.
[103] Atkinson, above n 101, 6.
[104] Royal Society for the Prevention of Cruelty to Animals Australia, *What is the RSPCA Position on Greyhound Racing?* (12 August 2011) Royal Society for the Prevention of Cruelty to Animals Australia <http://kb.rspca.org.au/What-is-the-RSPCA-position-on-greyhound-racing_242.html>.
[105] Judge G D Lewis AM, above n 57, 7.

only 4.2% of greyhounds bred. Statistics provided by GRV in respect of 2006 showed that just over 7,500 (7,680) live greyhound pups were born.

4,000 of these pups are registered as racing greyhounds. Of these, about 700 dogs are kept for breeding purposes, or retained by their owners as pets. A further 320 dogs will pass successfully through GAP. That leaves about 3,000 fit young dogs who are killed" [i.e. in Victoria every year]

From the original 7,500, the remaining 3,500 dogs, which are registered as racing greyhounds, do not make it to the track. I accept that the greater proportion are killed because they are too slow to race. The conclusion which can be drawn, is that of the 7,500 greyhounds born, approximately only 1,000 will live a full life span.

GRV acknowledged that many of the litters, which are registered, would produce pups, with no real prospects of success and facing a very bleak future….GRV should use its regulatory powers to control registration to breed, to minimise the present carnage involving young and healthy dogs.[106]

(a) An example from Qld

Greyhound Australasia's Rules require an owner to advise the controlling body if a dog has been euthanised on its retirement from racing[107] and Queensland's Local Rules cover aspects of breeding, including insemination. However, there is no requirement to report on the number of dogs killed before they are licensed. Yet, it is during these years, prior to being licensed for racing that the 'carnage' of killing young and healthy dogs occurs. If animals are brought into existence for the purposes of a specific industry, it seems reasonable that the regulations should take a life span approach. This lack of attention to the welfare of young dogs seems inconsistent with the purpose of the *Racing Act 2002* (Qld) which includes safeguarding the welfare of all animals involved in racing.[108]

Another corollary of over-breeding is the export trade of greyhounds to the racing industry in Asia, with China and South Korea reportedly receiving regular shipments.[109] These nations reportedly purchase surplus dogs that are too slow to race by Australia standards,[110] yet 'lack

[106] Ibid, 5.
[107] *Rules of Greyhound Racing of Greyhound Racing Authority* (Qld) r 106(3).
[108] *Racing Act 2002* (Qld) s 4 (1)(c).
[109] Jones, above n 13, 678.
[110] Ibid.

substantive welfare regulation which would deter acts of cruelty'.[111] Peter Singer has recently commented on animal abuse in China and this does not bode well for fate of greyhounds post-export.[112] In June 2011 Chinese animal welfare groups urged Australia to ban the export of greyhounds for use in racing in Macau. According to an investigation undertaken by the *South China Sunday Post*, 383 healthy greyhounds exported from Australia to Macau were culled at the Canidrome racetrack during the previous year.[113] Reportedly racing animals are banned from re-homing via rehabilitation programs due to what are considered behavioural problems.

The animal welfare issues associated with the live export of greyhounds are comparable to those raised in relation to the live export of cattle. The Federal government's response to the public outcry prompted by the treatment of cattle exposed on *4 Corners* in May 2011[114] include a new arrangement by which exporters will be required to provide assurances that Australian livestock exported to Indonesia will be managed in a manner consistent with *World Organisation for Animal Health* standards and guidelines. [115] The Government has also initiated investigations into how similar arrangements might be extended to all export markets for Australian livestock. The principles for these investigations include traceability or accounting of animals through the supply chain, independent auditing to ensure conformity with requirements, and accountability of exporters, and public transparency.[116] The same arrangements should be in place for the export of animals other than livestock, including greyhounds. However, the salient distinction that marks the export of greyhounds from the live export of cattle as completely illegitimate is its purpose: sport or entertainment.

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[111] Ibid, 678-679.
[112] Peter Singer, 'Moral Progress and Animal Welfare' *ABC Religion and Ethics* (14 July 2011). <http://www.abc.net.au/religion/articles/2011/07/14/3269159.htm>.
[113] 'Animal groups seek to ban greyhound exports to Macau', Macau Daily Times, 6 June 2011. <http://www.macaudailytimes.com.mo/macau/25950-Animal-groups-seek-ban-greyhound-exports-Macau.html at 1 October 2011>; Animals Asia, 'Walk for Greyhounds', pleads with people to write letters to both the Irish and Australian government encouraging the banning of exports of greyhound animals.
[114] Australian Broadcasting Corporation, 'A Bloody Business', *4 Corners*, 30 May 2011 (Sarah Ferguson) <http://www.abc.net.au/4corners/content/2011/s3228880.htm>.
[115] Commonwealth of Australia, *DAFF's Statement to the Senate Committee Inquiry into Animal Welfare Standards in Australia's Live Export Markets'* Senate Committee Inquiry into 'Animal Welfare Standards in Australia's Live Export Markets', 10 August 2011 <http://liveexports.gov.au/news/daff-statement-to-senate-committee-100811>.
[116] Ibid.

III. LESSONS FROM OTHER JURISDICTIONS

A. THE UNITED KINGDOM

In both the US and the UK awareness raising campaigns and media coverage of greyhound welfare related incidents have led to significant legal reform. In the UK, in 2006, public outrage was sparked by revelations published in the *Sunday Times* regarding David Smith, a builder's merchant who allegedly killed and buried up to 10,000 greyhounds for £10 (UK) per dog, on land near his home in Seaham County Durham. Although Mr Smith admitted to killing and burying thousands of former racing greyhounds, the RSPCA (UK) did not bring charges on the basis of animal cruelty laws. The organisation had concluded that the dogs had been killed humanely. Eventually, after six months of investigation, the Environment Agency prosecuted Mr Smith under the *Pollution Prevention and Control Regulations 2000 (UK)* for burying the greyhounds without a permit.[117]

What became known as *Seaham* led to an Associate Parliamentary Group for Animal Welfare (APGAW) inquiry into welfare issues surrounding greyhounds in England.[118] The APGAW made a range of recommendations aimed at improving welfare standards including measures to reduce the number of unwanted dogs, for example, by 'matching the number of dogs allowed in the industry with the numbers that can be re-homed at the end of their racing career',[119] access and inspection of race tracks, and regulations requiring annual publication of injuries data. It also recommended that the industry 'be regulated by a broadened independent body', according to a 'set of publically agreed principles', with 'equal weight of influence from all of the different interest groups involved'.[120] An inquiry into the industry's regulatory system was conducted concurrent with the APGAW review.[121] Overall, *Seaham* led to a 'significant expression of public disgust' and pressure on the UK Government to

[117] 'Greyhound Killer to Face Tougher Sentence' *The Guardian* (UK), 16 February 2007. <http://www.guardian.co.uk/uk/2007/feb/16/ukcrime.animalwelfare>.
[118] The Associate Parliamentary Group for Animal Welfare, *The Welfare of Greyhounds: Report of the APGAW Inquiry into the Welfare Issues Surrounding Racing Greyhounds in England* (2007).
[119] Ibid, 6.
[120] Ibid, 8.
[121] Bernard Donoughue, '*Independent Review of the Greyhound Industry in Great Britain'* Report by Lord Donoughue for The British Greyhound Racing Board and National Greyhound Racing Club (27th November 2007).

introduce primary legislation with 'the purpose of formally regulating greyhound racing as a publicly licensed activity'.[122] The outcome was the enactment of *The Welfare of Racing Greyhounds Regulations*[123] under the *Animal Welfare Act* 2006 (UK).

B. THE UNITED STATES

In the US, *GREY2K USA* and has been instrumental in raising public awareness of animal welfare issues in the greyhound racing industry. *GREY2K USA* is a national non-profit organization dedicated to the welfare of greyhounds that focuses on law reform through 'state legislatures, at the ballot box, and in the courts'.[124] Forms of 'institutionalised abuse and mistreatment',[125] reported by the organisation include confinement of dogs in cages for periods of 20 hours or more per day, the size of track cages, in which a larger greyhound would not be able to stand fully erect, and the frequency and severity of injuries sustained during racing.[126] *GREY2K USA* has also lobbied in relation to the number of dogs killed per year. As in Australia, this occurs through a process of culling litters for pups unsuitable for racing, due to injury sustained on the track, or by euthanising dogs at the end of their racing careers. Some of welfare issues that have resulted in penalties under US anti-cruelty statute for those working in the greyhound industry have included the use of rabbits and wild jackrabbits as live lures for the purposes of training,[127] neglecting to provide medical care,[128] abandonment and starvation,[129] and overcrowding and abuse committed during transportation.[130]

MASSACHUSETTS

In an article published in *Animal Law* in 2001 Erin Jackson summarised the major animal welfare in Massachusetts's greyhound industry as follows:

- The magnitude of dogs killed as pups and at the end of their racing careers
- The use of live lures for the purposes of training;

[122] Ibid, pg 87.
[123] 2010 (UK).
[124] GREY2K USA, '*Who Are We*?', <http://www.grey2kusa.org/who/index.html>.
[125] Addie Patricia Asay, 'Greyhounds: Racing to their Death', 32 *Stetson Law Review* (2003), 443.
[126] Grey2K USA, '*Fact Sheet: Greyhound Racing in the United States'* (6th October 2011). <http://www.grey2kusa.org/about/fact_sheets.html> at 18 October 2011>.
[127] Asay, above n 125, 438.
[128] Ibid.
[129] Asay, above n 125, 441.
[130] Asay, above n 125, 442.

- Neglecting to provide medical care;
- The frequency and severity injuries on the track;
- Abandonment and starvation;
- Overcrowding and abuse committed during transportation;
- Illicit drug use; and
- The size of cages in which greyhounds may be kept for long periods.[131]

Jackson also recounted that during the late 1980s and 1990s (1986, 1992, and 1999) fires at the O'Donnell-Pike Kennel Compound killed 28, 87, and 8 dogs respectively. The buildings in which the dogs were housed lacked basic fire safety features and the regulations at the time did not address such requirements.[132]

At the time of Jackson's publication greyhound racing was legal in 17 states in the United States.[133] By 2011 this number had plummeted to seven, largely due to the advocacy efforts of *GREY2K USA* and several other animal protection agencies.[134] According to *GREY2K USA*, commercial dog racing in the USA peaked in the 1980s. However, competition from other forms of gambling, combined with growing public awareness of the cruelty of dog racing, resulted in a steady decrease in racetrack patronage.[135] Reportedly, between 2002 and 2009, the total amount gambled on greyhound racing declined by 53% and state revenue had declined by 57%.[136] This background of declining industry profitability provided fertile ground for community advocacy aimed at abolishing greyhound racing across the United States.

GREY2K USA grew out of a 2000 effort to ban racing in Massachusetts[137] and in 2001 *GREY2K USA* commenced a national campaign to raise awareness of cruelty in the

[131] Erin N Jackson, 'Dead Dog Running: the Cruelty of Greyhound Racing and the Bases for its Abolition in Massachusetts' (2001) (7) *Animal Law* 175, 176.
[132] Ibid,182.
[133] Ibid, 176.
[134] GREY2K USA, *State by State*, <http://www.grey2kusa.org/action/states.html>.
[135] GREY2K USA, *History* (n.d.) <http://www.grey2kusa.org/about/history.html>.
[136] GREY2K USA, *National Fact Sheet*, 6 October 2011, 3.
[137] Eric Moskowitz, 'The Final Lap for Greyhounds in Mass.' *The Boston Globe* (Boston), 26 December 2009 <http://www.boston.com/news/local/massachusetts/articles/2009/12/26/in_massachusetts_a_final_lap_for_greyhounds/> .

greyhound racing industry.[138] In 2008, under the umbrella name the 'Committee to Protect Dogs', a coalition of organisations comprising the Massachusetts Society for the Prevention of Cruelty to Animals, *Greys2K USA* and the Humane Society of the United States filed a petition to enact *The Greyhound Protection Act*, which would ban pari-mutuel dog racing as of 1 January 2010. [139]

(a) The Indirect Initiative Process

The initiative referendum process, also referred to as an 'indirect initiative', has been a part of the Massachusetts Constitution since 1918 and was ratified by voters as Article XLVIII of the Article of Amendment.[140] This provides for citizens of the State of Massachusetts to initiate legislation by way of petition. Any 10 registered voters may file a proposed law or constitutional amendment with the Attorney General. The Attorney General certifies the proposal according to certain criteria and the petitioners are then provided with a summary of the proposed measure. The petition may be qualified for submission to the legislature. This involves the petitioners obtaining 'the signatures of registered voters equal in number to not less than 3 percent of the entire vote cast for the Governor at the preceding state election'.[141] The petition is then filed in the General Court.[142] What is known as a 'qualified measure' goes to the legislature to be enacted. For a proposed law, if the legislature does not enact the measure, it is placed on the ballot for public approval.[143] Petitioners are required to obtain additional signatures 'of registered voters equal in number to one-half of one percent of the entire vote cast for Governor at the last state election'.[144] If this is achieved the petition is included in the next state election ballot.

[138] Grey2K USA, *Greyhound Racing in the United States: Fact Sheet* , 6 October 2011, 3.
[139] *George L Carney, JR v& Others V Attorney General & Another* 451 Mass 803 (2008).
[140] Robert G Stewart, 'The Law of Initiative Referendum in Massachusetts' 12 *New England Law Review* (1976-1977) 455.
[141] Ibid 457
[142] Ibid 457.
[143] Ibid 456.
[144] Ibid 457.

(b) The Passage of the *Greyhound Protection Act*: Massachusetts Question 3

In November 2008, voters in Massachusetts approved a ballot that saw the enactment of the *Greyhound Protection Act.*[145] The *An Act to Protect Greyhounds,* also known as *Massachusetts Question 3,* was one of three initiated state statutes that appeared on the November 2008 ballot.[146] The passage of Question 3 meant that the state's two greyhound racetracks, Raynham-Taunton Greyhound Park and Wonderland Greyhound Park in Revere were required to close by January 1, 2010.

The enactment of the *An Act to Protect Greyhounds* was the result of almost a decade of legal advocacy. The first initiative petition to ban pari-mutuel dog racing was presented in 2000, though was rejected by vote of 48.59% against, 46.70% in favour, and 4.71% blank.[147]

A second petition, '*An Act to Protect Dogs*' was certified by the Attorney General in 2006. However it was the subject of a challenge in the Supreme Judicial Court. The petition proposed to dismantle the dog racing industry in Massachusetts by repealing the provisions of General Law, chapter 128A which regulated pari-mutuel dog racing. In addition, it proposed a broadening of criminal statutes that penalised dog fighting and the abuse of dogs.[148] The court held that the petition violated the relatedness limitation of article 48. This was because the petition's proposal to expand existing criminal sanctions against cruelty to animals did not have 'meaningful operational relationship' to the proposal to establish laws that would abolish pari-mutuel dog racing.[149]

The proponent of the 2006 initiative petition, the 'Committee to Protect Dogs', proceeded to submit a further petition, which corrected the 'relatedness' problem because it focused solely on pari-mutuel dog racing. The proposed law would take effect on the 1st January 2010. If approved by a majority of voters, the law would eliminate pari-mutuel dog racing and close the final two dog racing tracks in operation in Massachusetts. In response, supporters of pari-

[145] GREY2K USA, *Massachusetts* (2011) <http://www.grey2kusa.org/action/states/ma.html>.
[146] Ibid.
[147] *George L Carney, JR & Others v Attorney General & Another* 451 Mass 803 [2] (Botsford J) (2008)
[148] *George L Carney, JR, & others v Attorney General & Another* 447 Mass.218 [219] (Marshall C J) (2006).
[149] Ibid [220].

mutuel dog racing sought relief in the County Court in the nature of certiorari and mandamus against the Attorney General's certification of Initiative Petition 07-06 entitled '*An Act to Protect Greyhounds*' (Petition) and to 'enjoin the Secretary of the Commonwealth from placing the petition on the 2008 State-wide ballot'.[150]

The single justice reserved and reported the case to the full Court.[151] The plaintiffs opposed the petition because, they argued, it violated the 'local matters' limitation on the initiative petition process. It was aimed at only two localities where dog racing existed. Hence, the legislature had localised the issue of dog racing.[152] The court rejected the localities argument as the initiative provisions of article 48 did not require that a proposed statute have uniform state-wide application.[153] Post petition, the legal status of dog racing would be changed state-wide. The plaintiffs also argued that the proposed law would effectively take their property without due compensation and would constitute a taking of their expectation of continued renewal of their racing licences.[154] On this point the court concluded that the proposed law did not necessarily amount to a regulatory taking of the plaintiff's tangible property; it would be open to the plaintiffs to challenge this point after the adoption of the law.[155] In conclusion, the requirements of procedural due process with respect to the plaintiff's property interests in their licenses had been satisfied, and the plaintiffs did not hold any compensable property interest in their racing licences.[156]

Question 3 was approved as part of the Massachusetts State election in November 2008 with a vote of 53.6% in favour and 42% against.[157] In 2009, a pro-racing group by the name of Protection of Working Animals and Handlers (POWAAH) called for a judicial inquest, claiming that the Question 3 proponents had violated election laws by knowingly publishing

[150] *George L Carney, JR & Others v Attorney General & Another* 451 Mass 803 (2008).
[151] *George L Carney, JR & Others v Attorney General & Another* 451 Mass 803 [8] (Botsford J) (2008).
[152] Ibid [14].
[153] Ibid [15].
[154] Ibid [22].
[155] Ibid [21].
[156] Ibid [26].
[157] The Commonwealth of Massachusetts, *Return of Votes for Massachusetts State Election November 4 2008*, (3 December 2008) 51.

false information and offering inducements to voters. This challenge failed and the 'final lap' for greyhounds in Massachusetts took place on 26 December 2009.[158]

DISCUSSION

As outlined above, in the US and the UK greyhound welfare related law reform has been driven in large part by media coverage of critical events and sophisticated community awareness programs that integrate legal advocacy. By contrast, the Australian public has yet to be confronted by a *Seaham* incident and currently lacks a national legal advocacy organisation dedicated to greyhound welfare. This may explain why Australia has not seen national coordinated advocacy targeting abolition of greyhound racing. The lack of critical incidents attracting media coverage also means that, to date, there has been little pressure for formal inquiries into animal welfare in the racing industry.

The tendency in Australia has been for the greyhound racing industry to respond to what is currently ad-hoc public pressure with some tightening of its industry rules and support for state-based Greyhound Adoption Programs (GAP). Much of recent reform has centred on drug screening. Tighter regulatory measures aimed at eliminating the use of illicit drugs has obvious benefits for the greyhounds, however, the main aim of these reforms has been to improve industry integrity for punters.[159] The establishment of GAP has grown out of community concern for the killing of greyhounds on their retirement from the racing industry. However, these programs simultaneously provide a credible public relations platform for the racing industry to present itself as an animal welfare-friendly industry. Although the emergence of associations such as *The Friends of the Hound*[160] and GAP is encouraging, these organisations focus on rescue rather than legal advocacy. In 2004, the Chief Executive Officer of *Greyhounds Australasia*, the nation's peak racing industry body, identified the adoption program as a 'double edged sword' because 'with that comes an awareness: people are starting to question what happens to them [the dogs] after they finish racing'.[161]

[158] Moskowitz, above n 137.
[159] Scott, above n 58; Judge G D Lewis AM, above n 58.
[160] Friends of the Hound, <http://www.friendsofthehound.org.au/about.htm> .
[161] Edwards, above n 6.

The key to legal reform in Massachusetts was the availability of the direct initiative process. However, what drove the success of the November 2008 ballot to ban pari-mutuel dog racing was the efforts by advocacy groups to expose the treatment of greyhounds and thus create the public will towards legislative change. As an initial step in this process in Australia, and given the paucity of information available in the public domain reporting on greyhound welfare, there is a need to advocate for greater industry transparency, particularly with regard to how the industry manages breaches of welfare-related racing Rules, the referral of possible cruelty offences, and the outcomes of those referrals.

Based on the regulatory systems in place in Queensland and Victoria, areas of practice that would be worthy of improved reporting standards in the public interest include:

1) Summary data on breaches of animal welfare related Rules of Racing and the penalties applied. Reference to Queensland's *Animal Welfare Policy*, for example, indicates that this would encompass Greyhound Australasia Rule no 106, welfare of greyhound, Rules 79-84, drug screening and Queensland Local Rule 27, minimum standard for kennelling. This could constitute a discrete area of reporting.
2) Codification of welfare offences under the Rules, as was suggested in the Scott Review for the NSW racing industry. This would involve setting out the elements of the offence and those elements relevant to sentencing. As part of this, Stewards' responsibilities would be limited to minor offences and this may mean that some welfare offences would be referred on at the outset.
3) Where other authorised officers have responsibility for referral of possible cruelty offences to the RSPCA, regular publication of data as to the number and nature of those referrals.

In addition, it seems appropriate that the racing industry have reporting accountability for all dogs bred for the purposes of use in the industry. This could involve tracking dogs over their life span and data collection regarding the number of young dogs killed before they start racing, dogs exported to Asian racing markets, euthanasia subsequent to injuries sustained on the track, and those euthanised when they are no longer useful for racing. The RSPCA and vets involved in providing euthanasia services for the greyhound industry could report on the

numbers of dogs euthanised each year and reasons for euthanasia for example, post-injury or 'retirement'. The suggestion that the RSPCA take on such reporting responsibilities is made cognisant of the organisation's limited resources. The Australian public indirectly pays for the majority of animal cruelty policing activity and prosecutions as only 2% of the RSPCA's income comes from the Commonwealth, State or Territory governments.[162] Advocacy efforts must therefore be directed to secure appropriate funding for animal cruelty law enforcement.

A final barrier to legislative reform may be the nature of current inter-code agreements as to how TAB payments are distributed among the three racing codes, which does not necessarily correspond to each racing code's wagering turnover. For example, in NSW, greyhound racing accounts for 17% of wagering turnover, though receives 13% of the total payments made by the NSW TAB to the three racing codes.[163] Over the last 11 years greyhound racing has subsidised thoroughbred and harness racing in NSW by 92 million (sub 248). The situation in Queensland is similar.[164] Clearly there are powerful interests beyond the greyhound racing invested in maintaining the status quo.

CONCLUSION

This article explored welfare issues in the greyhound industry arguing that, despite recent regulatory reforms and industry efforts to improve welfare standards, there is sufficient evidence available to conclude that this form of animal use can no longer be justified as 'necessary'. The experience of law reform discussed drawing on examples from the UK and USA demonstrated that raising awareness of current practices through the media and targeted advocacy campaigns is an indispensable part of achieving law reform. If we are to rely on a utilitarian approach to justify cruelty and large-scale killing of animals in the name of sport then it is only fair that all of the facts are available in order that our society is able to accurately balance interests. In Australia, improving industry transparency is an important first step and there is substantial room for improvement on this point. We have suggested that the most important area for improvement is the need to trace the lives of dogs bred for the

[162] Cao, above n 19.
[163] Productivity Commission, above n 41, 16.24.
[164] D Brasch, 'Qld Greyhound Racing's $18 million TAB Shortfall', *Greyhounds Queensland* (online) (2006), 5, cited in Productivity Commission, above n 41, 16.24.

racing industry, using a life span approach. Further, the racing industry is suitably placed to undertake this responsibility, using its regulatory powers and substantially increasing publication of this information in the public domain.

In our view the large scale killing and other practices which cause harm to greyhounds is best considered as one part of a larger system of structural violence in which various exploitative practices between humans filter down to impact on greyhounds as end point victims. This is reflected in the ways in which regulatory measures taken to improve integrity and protect the 'average punter' from corrupt practices have an indirect positive effect on animals involved in racing. A key example is the recent changes made in relation to drug screening. Ultimately the interests of humans and animals are inter-dependent. We hope we have achieved our aim: to mark the welfare of greyhounds in the context of the gambling industry as an important Animal Law topic in need of further attention and debate by legal academics.

Appendix A

Australian State and Territory Racing Acts

State	**Current Racing Act**
Victoria	*Racing Act* 1958 (VIC)
New South Wales	*Greyhound Racing Act* 2009 (NSW)
Tasmania	*Racing Regulation Act* 2004 (Tas)
ACT	*Racing Act* 1999 (ACT)
Western Australia	*Western Australian Greyhound Racing Association Act* 1981 (WA)
Northern Territory	*Racing and Betting Act* 2011 (NT)
Queensland	*Racing Act* 2002 (Qld)

State and Territory Greyhound Regulatory Bodies

State	**Regulatory Body**
Victoria	Greyhound Racing Victoria (GRV)
New South Wales	Greyhound Racing New South Wales (GRNSW)
Tasmania	Greyhound Racing Tasmania (GRT)
ACT	Canberra Greyhound Racing Club (CGRC)
Western Australia	Western Australian Greyhound Racing Authority (WAGRA)
Northern Territory	Greyhound Racing Northern Territory (GRNT)
Queensland	Racing Queensland Limited (RQL)

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