

COMPLIANCE AND ENFORCEMENT EXPLANATORY GUIDE

February 2020



Contents

Purpose of this Guide	3
1. THE COMMISSION'S REGULATORY APPROACH.....	3
1.1 Set standards and rules.....	4
1.2 Facilitate best practice.....	4
1.3 Inform, educate and support participants.....	4
1.4 Detect and address non-compliance	5
1.5 Enforce the law and rules	5
2. PRINCIPLES THAT GUIDE THE COMMISSION'S REGULATORY ROLE	6
2.1 Consultation in the development of standards and policies.....	6
2.2 Transparent standards, decisions and actions.....	6
2.3 Timely action	6
2.4 Targeted programs based on risk and impact.....	6
2.5 Proportionate and consistent response to wrongdoing	7
2.6 Efficient use of compliance and enforcement resources	7
2.7 Accountability in decision-making	7
2.8 Transparency of regulatory decisions	7
3. HOW THE COMMISSION PRIORITISES ITS COMPLIANCE AND ENFORCEMENT ACTIVITIES.....	7
4. THE PROCESS OF INVESTIGATING, COMMENCING AND FINALISING DISCIPLINARY ACTION AGAINST PARTICIPANTS.....	9
5. HOW THE COMMISSION DETERMINES THE PENALTIES THAT WILL APPLY WHEN ADDRESSING NON COMPLIANCE	11
6. REVIEW AND APPEAL RIGHTS.....	12
6.1 Internal review of Commission compliance and enforcement decisions.....	12
6.2 External review of Commission compliance and enforcement decisions.....	12
7. ENFORCEMENT OUTCOMES AND PROMOTING REGULATION.....	12
7.1 Communicating the outcomes of enforcement action	12
7.2 Releasing information publicly	13
7.3 Releasing information to regulators	13

Purpose of this Guide

The purpose of this Guide is to explain how the Commission goes about its regulatory role, including its approach to achieving high levels of compliance by greyhound industry participants. This Guide also explains the requirements placed on participants and the Commission's approach to detecting and bringing to account non-compliance.

This guide is designed for industry participants. It uses plain English to explain key concepts. Participants may need to obtain further advice, including legal advice, if disciplinary actions commence against them.

The Greyhound Welfare and Integrity Commission's Vision for the industry is:

"A greyhound racing industry which meets high animal welfare and integrity standards and enjoys public confidence."

In achieving this vision, the Commission seeks to secure a prosperous industry by improving welfare and integrity.

The Commission implements programs designed to support participants to meet their obligations and to detect instances of non-compliance and to bring to account these breaches. The Commission's regulatory approaches are explained in more detail below.

1. THE COMMISSION'S REGULATORY APPROACH

The Commission supports participants to achieve high levels of voluntary compliance with rules and requirements. It does so by setting standards and rules; by identifying and facilitating best practices and by informing, educating and supporting participants. The Commission also has a role in enforcing the rules and requirements and does so by detecting instances of non-compliance and by applying appropriate penalties and sanctions. These roles are outlined in Figure 1.



Figure 1: The Commission's regulatory approach

Each regulatory role is explained below.

1.1 Set standards and rules

The Commission's role as a regulator for the greyhound racing industry includes developing standards, codes and policies that contribute to the achievement of goals for the industry and are consistent with the objective of the *Greyhound Racing Act 2017*. The Commission has a policy of consulting widely with all stakeholders when it introduces new rules, policies and standards. Consultation mechanisms include the Animal Welfare Committee, the Commission's Greyhound Industry Knowledge Network, GRNSW, GBOTA and Greyhounds Australasia.

The Commission may also undertake research into aspects of the industry to deepen understanding of issues and to generate an improved evidence base for its regulatory framework.

Relevant standards are reviewed periodically and will evolve over time in response to improved knowledge and changes in industry and community expectations.

1.2 Facilitate best practice

The Commission has a role in identifying best practices across many aspects of the industry's operation, including breeding, training, husbandry and other welfare practices. The Commission plays a role in facilitating the identification of practices that, if widely promoted and adopted, will support the industry to achieve high standards of welfare and integrity.

1.3 Inform, educate and support participants

Every industry participant has a responsibility to be aware of, understand and meet their obligations under all applicable legislation, standards, rules, policies and codes for the industry. Legislation and rules relevant to participants in the NSW greyhound industry comprise:

- *Greyhound Racing Act 2017*
- *Greyhound Racing Regulation 2019*
- *Prevention of Cruelty to Animals Act 1979*
- *NSW Crimes Act 1900*, particularly section 530 relating to serious animal cruelty offences
- The Rules of Racing (both national and local rules)
- Commission policies

The Regulations and Acts listed throughout this document are referred to as 'requirements'.

The Commission provides several services to help participants understand their obligations. These services include:

- The publication of information, education and explanatory materials
- The Commission's customer service channels (phone, email and head office)
- Alerts on the Commission website, media releases, social media and in some circumstances direct communication of information to all industry participants

- Advice provided to participants, either in the field or at racetracks by Commission inspectors, stewards and veterinarians.

The Commission is continually enhancing its help and education services and encourages participants to pro-actively seek advice from the Commission. The Commission is here to help you comply with your requirements and achieve the vision for this industry.

1.4 Detect and address non-compliance

Whilst the Commission aims to foster a culture within the industry of willing ‘voluntary compliance’ it nevertheless plays an important role in detecting instances of non-compliance and bringing to account participants who breach the requirements. Public confidence in the greyhound racing industry will in part derive from the Commission’s ability to quickly identify and deal with non-compliance.

The Commission implements several programs designed to detect breaches – breaches that relate directly to racing and those that occur away from the tracks. These programs include:

- The Prohibited Substance Detection Program, designed to detect the use of prohibited substances
- The Tracking of Registered Greyhounds Program, designed to ensure every registered greyhound is where it should be, is readily locatable and is in good shape
- The routine Kennel Inspection Program, designed to assess and ensure standards of care for greyhounds is in accordance with Commission policies, including relevant codes of practice
- The Race Day Integrity Program is designed to ensure race meetings are conducted in accordance with the rules.

The Commission actively monitors levels of compliance with requirements and adjusts its programs and responses according to what is being discovered. Information gathered about the types and frequency of non-compliance is used by the Commission to plan future responses. These responses may include rolling out additional help or education and/or reviewing the relevant standards and/or conducting further enforcement action.

1.5 Enforce the law and rules

Where breaches of requirements are detected, the Commission takes action to address those breaches. The nature of the action taken, and the severity of the penalties applied to participants depends on many factors. These matters are further described in sections 4, 5 and 6 of this document.

2. PRINCIPLES THAT GUIDE THE COMMISSION'S REGULATORY ROLE

In everything it does, the Commission is guided by the following key principles which are designed to facilitate the highest levels of voluntary compliance and to ensure the Commission is efficient and effective in its role as the industry regulator.

2.1 Consultation in the development of standards and policies

The Commission commits to consulting with industry participants and stakeholders on all key proposed policy changes. This is done to better understand the potential impacts of proposed changes and to seek additional perspectives on the issue. Industry participants and stakeholders will be advised of upcoming opportunities to provide feedback.

2.2 Transparent standards, decisions and actions

The Commission will make available to participants the things they need to know to meet the requirements relevant to them. These materials will be made available through multiple avenues so that participants can easily understand what is expected of them and how the Commission will respond when breaches are identified.

2.3 Timely action

The Commission commits to undertaking its investigation, enforcement and disciplinary functions as expeditiously as possible. The time frame for completing investigations and disciplinary processes is set out within its Customer Charter which can be found on the Commission's website.

2.4 Targeted programs based on risk and impact

The Commission is no different to any other organisation with a regulatory role, in that it will never have enough resources to identify, investigate and bring to account every instance of non-compliance in the greyhound industry. Therefore, the Commission must prioritise what matters it pursues and in what manner.

The Commission will prioritise its actions based on an assessment of the risks posed to the welfare of animals, the integrity of racing and the potential impact of levels of confidence in the greyhound racing industry. For example, all allegations relating to serious animal welfare abuses, such as live baiting, will be fully investigated. Breaches of key Commission policies, such as the Rehoming Policy, will also be a focal point of the Commission's Compliance Programs.

The Commission's compliance and enforcement activities are also designed to:

- prevent any further harm (to animals, people and the reputation of the industry)

- punish those who break the law
- deter further non-compliance within the industry, and
- encourage improved industry performance by building the case for improving practices and influencing future standards.

2.5 Proportionate and consistent response to wrongdoing

The Commission will take enforcement action appropriate to the facts and circumstances of each matter and will balance the considerations listed above to achieve an appropriate response to the identified wrongdoing. The Commission will apply penalties to breaches it identifies in a consistent manner, whilst having regard to the individual circumstances of each matter.

2.6 Efficient use of compliance and enforcement resources

The Commission will apply compliance and enforcement resources as effectively and efficiently as possible to optimise greyhound welfare and integrity outcomes.

2.7 Accountability in decision-making

Participants aggrieved with decisions made by the Commission have access under law to avenues of review and appeal by external reviewers. In most cases this will be via lodging an appeal to the Racing Appeals Tribunal. These processes are explained in more detail in section 7.

2.8 Transparency of regulatory decisions

The Commission will make public decisions it makes in relation to disciplinary action taken to address non-compliance. This includes the publication of interim and final suspensions, at the time these decisions are made (or applied). The publication of such decisions is designed to provide assurance to members of the industry and the broader community that the Commission is effectively undertaking its role as the industry regulator and to achieve a deterrent effect. This is explained in more detail in section 8.

3. HOW THE COMMISSION PRIORITISES ITS COMPLIANCE AND ENFORCEMENT ACTIVITIES

The Commission takes a risk-based approach to identifying non-compliance, investigating allegations of non-compliance and taking enforcement. This means that the Commission may not commence action to investigate all complaints it receives, or all matters of non-compliance it identifies. However, all complaints and information received by the Commission will be recorded on the Commission's intelligence database and can contribute to future investigations.

The Commission has a range of compliance and enforcement options available to deter and

punish unacceptable conduct and to mitigate further welfare and/or integrity risks. The factors relevant to determining the nature and extent of action taken to respond to allegations of wrongdoing and/or instances of non-compliance are as follows:

- The seriousness of the alleged non-compliance
- The participant's relevant prior history (of compliance and non-compliance), with patterns of repeated non-compliant behaviour escalated for action
- Whether the non-compliant behaviour appears deliberate and wilful
- The significance of the issue for the industry in terms of level of public concern
- The extent of the non-compliant behaviour throughout the industry
- The consequences of the non-compliance and its impact including the actual and potential future harm posed to animals, people and the reputation of the industry
- Whether the matter is better dealt with by way of education as opposed to enforcement and disciplinary action.

The Commission will, as a broad principle, focus its investigative resources on serious breaches involving the deliberate and wilful breaches of the requirements.

In some circumstances, the Rules of Racing dictate that the Commission must (as opposed to may) take disciplinary action.

A diagrammatical representation of these principles is set out Figure 2.



Figure 2: The Commission's risk-based approach to compliance

4. THE PROCESS OF INVESTIGATING, COMMENCING AND FINALISING DISCIPLINARY ACTION AGAINST PARTICIPANTS

There are several steps that must occur when the Commission determines that disciplinary action will be taken. The following diagram shows these steps, including for disciplinary action that relates to prohibited substance matters and other matters, such as welfare breaches or misconduct.

An important principle that underpins the disciplinary process is the right of participants to be heard before the Commission finalises its action. This means that participants will receive several letters from the Commission that outlines our position on the matter and what we propose to do about it. These letters also outline the options available to participants, including for example, pleading guilty to charges; contesting the facts and evidence on which the Commission is relying; and/or providing submissions seeking a reduction in the proposed penalty.

Participants also have avenues to seek either an internal review of a Commission decision and/or to lodge an appeal in relation to a decision of the Commission with the Racing Appeals Tribunal. These appeal rights are explained in section 6.

DISCIPLINARY ACTION PROCESS



Figure 3: GWIC's disciplinary action process

5. HOW THE COMMISSION DETERMINES THE PENALTIES THAT WILL APPLY WHEN ADDRESSING NON COMPLIANCE

The provisions of the *Greyhound Racing Act*, its Regulations and the Rules of Racing enable the Commission to impose a variety of penalties for non-compliance with requirements. These can range from race day fines imposed by stewards for breaches such as failing to chase or marring, through to suspension from participation in the industry for periods of time and/or warning off for life.

As a general principle, the nature and extent of the penalty imposed will reflect the nature of the non-compliance, its seriousness and the impact the breach has or will likely have on the welfare of animals, the integrity of the industry and public confidence in the industry. Each participant's individual circumstances are also considered, including whether the participant has previously been penalised for non-compliance, any mitigating or aggravating factors and whether there is a need to achieve a significant deterrence effect.

The type of penalties available to the Commission to bring to account non-compliance is outlined in the following diagram. These types of penalties are mapped, showing the escalating seriousness of the penalty based on the level of harm caused by the non-compliant behaviour of the participant (Figure. 4).

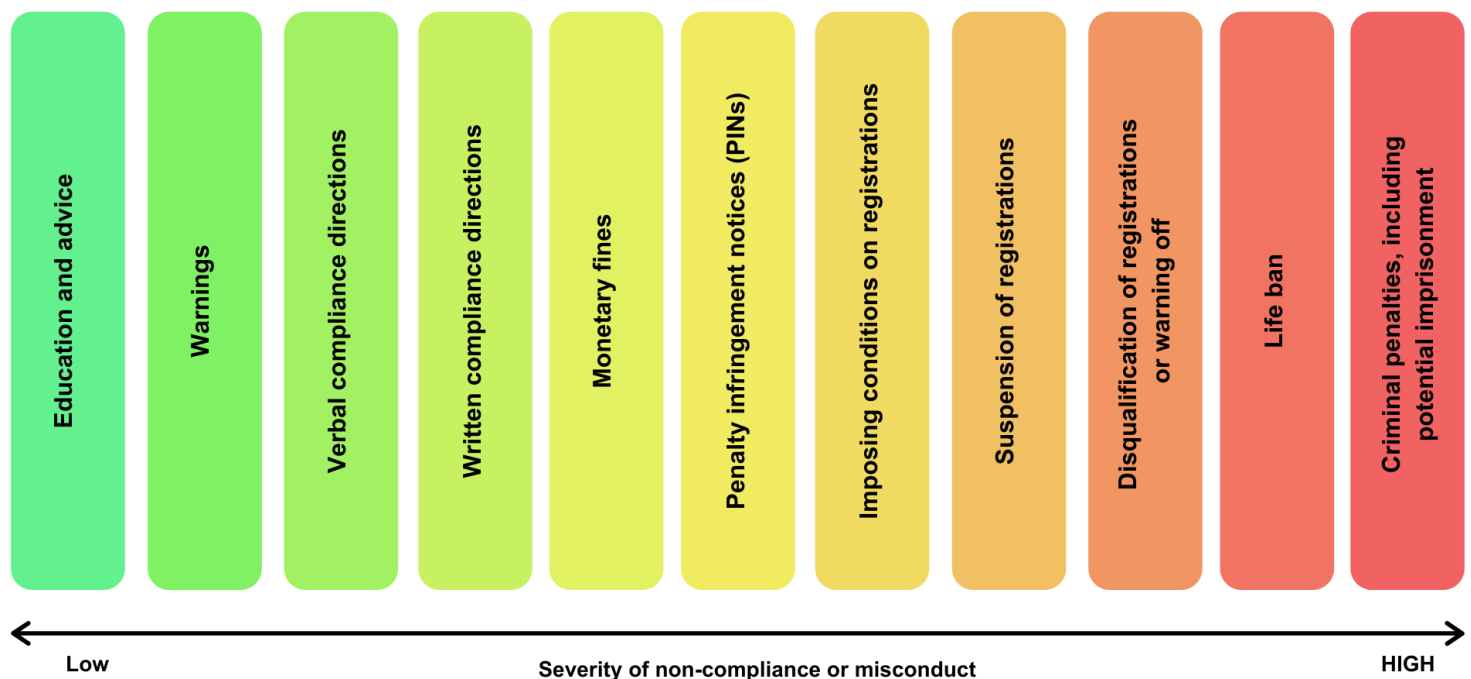


Figure 4: GWIC compliance and enforcement responses

6. REVIEW AND APPEAL RIGHTS

6.1 Internal review of Commission compliance and enforcement decisions

Industry participants who wish to seek an interval review of disciplinary action can lodge a request within 28 days of receiving their Notice of Disciplinary Action (NDA). This form is available on the Commission's website under "Integrity".

Lodging a request does not "stay" the commencement of the disciplinary action. A "stay" must be specifically requested on the request form.

6.2 External review of Commission compliance and enforcement decisions

An appeal to the Racing Appeals Tribunal (RAT) is available following a decision of the stewards and the Commission. It must be made within 7 days of receipt of the decision. Appeals are a full merits review, with the decision of the RAT substituted for the previous decision of the Commission, including stewards.

Not all decisions can be appealed. The Racing Appeals Tribunal Regulation 2015 sets out the decisions that can be appealed against. For example, no appeal is available where a fine of less than \$200 has been imposed.

Lodging an appeal does not "stay" the commencement of the disciplinary action. A "stay" must be applied for by the applicant on a form available on the Commission's website.

7. ENFORCEMENT OUTCOMES AND PROMOTING REGULATION

7.1 Communicating the outcomes of enforcement action

The Commission has a policy of publicly releasing the outcomes of disciplinary actions, at the time those actions are finalised. This includes the publication of details of interim suspensions and final disciplinary action. This policy is consistent with the role of the Commission as a regulator, including the need to be, and be seen to be identifying and addressing non-compliance and to act as a deterrence against other people who may seek to undertake similar non-compliant behaviour in the future. Publicly releasing the outcomes of disciplinary actions is also designed to provide assurance to every person in the industry and the broader community that the greyhound racing industry in NSW is being effectively regulated.

Information on the outcomes of compliance action is published on the Commission's website as soon as practicable after the decision has been made, at the end of disciplinary action by the Commission, court proceedings or a determination by the Racing Appeals Tribunal.

This information remains public for the duration of the period of any suspension or disqualification.

A summary of decisions is also published in the Commission's Annual Report. Where an appeal has been lodged, the matter is identified as 'subject to appeal'.

7.2 Releasing information publicly

The Commission often receives enquiries from the media about its work. Sometimes these media enquiries concern matters that are under investigation. The Commission's policy is to release information to the public and media organisations only when it is considered in the public interest to do so, having regard to the circumstances of each case, the stage of an investigation and the potential impact any release may have on the Commission's ability to gather evidence.

The Commission will also release media statements from time to time, to send specific messages about issues and risks and/or to maximise the regulatory deterrent effect of its compliance and enforcement actions.

7.3 Releasing information to regulators

Section 90 of the *Greyhound Racing Act 2017* authorises the Commission to share information and cooperate with other regulatory authorities in specific circumstances. The Commission must comply with the requirements for release set out in the legislation before releasing information to those bodies. Those regulatory bodies include:

- the NSW Police Force, or
- an animal welfare body, or
- a local council.