



PROSECUTION GUIDELINES

2018

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Introduction

Greyhound Racing Victoria (GRV) regulates the sport of greyhound racing under the *Racing Act 1958*. Section 75 of the Racing Act, establishes GRV as the regulator for greyhound racing in Victoria, with functions including the control of the sport, promoting and improving animal welfare, and promoting and monitoring compliance with the Rules of Racing.

GRV's Regulatory Framework is aimed at ensuring GRV has a modern and sophisticated approach to regulation with flexible and proportionate methods of enforcement to deal with various levels of non-compliant behaviour by participants of the sport, as well as providing a message of deterrence to participants, the community and other stakeholders.

The level of enforcement action taken by GRV, will reflect the severity and the potential impact of the non-compliance on the welfare of the greyhound or the integrity of the sport. GRV's general approach to penalties attempts, as far as possible, to differentiate between deliberate, reckless or persistent non-compliers and those who might make a genuine error and for whom alternative interventions may be more appropriate.

Most greyhound racing industry participants meet their obligations and strive for compliance with the Rules. Penalties have an important role to play in supporting these participants so that they are not disadvantaged.

These Guidelines support GRV's vision, mission, values and strategic objectives. The Guidelines support GRV's commitment to putting greyhound welfare and safety first, reinforce GRV's framework of contemporary rules and, demonstrates GRV's commitment to enhanced industry regulation that drives improved outcomes.

Purpose

GRV has produced these prosecution guidelines as part of its commitment to transparency in its enforcement and compliance activities and is part of a suite of documents including GRV's Regulatory Approach, the Compliance Strategy and the Penalty Guidelines.

The guidelines set out principles of a general nature to provide an understanding of how GRV will approach enforcement. These guidelines are not directions. They are published to educate participants about GRV's approach and are designed to assist GRV to make enforcement decisions to achieve consistency, efficiency, effectiveness and transparency.

It is noted that these guidelines relate to compliance with the Racing Act and GRV Rules of Racing. Should GRV Officers be authorised to undertake enforcement activity under other legislation, the guidelines will be updated.

GRV's Regulatory approach

GRV's overarching regulatory principles are:

Regulatory necessity – GRV aims to regulate greyhound racing in Victoria as much as is necessary to protect the welfare of greyhounds and the integrity of the sport.

Reflecting risk – GRV focuses on risk as a guide for GRV’s decision-making, priority setting and use of resources.

Information & education – GRV actively focuses on ensuring that industry Participants fully understand their responsibilities and are in the best position to fully comply.

Proportionate regulation – While GRV’s preference is to guide, educate and support Participants to better understand and comply with their obligations, GRV is committed to actively and proactively pursuing enforcement action as appropriate to address non-compliance.

GRV’s Regulatory Approach for 2017/18 can be found at

<http://www.grv.org.au/about-us/grv-regulatory-approach-2017-2018/>

GRV’s compliance strategy

The effectiveness of any compliance regime depends not only on the way the penalties are designed but also on the way they are applied.

GRV’s compliance strategy is a common-sense approach designed to reinforce obligations, encourage compliance, deter non-compliance and ensure participants return to a state of compliance to remain in the sport.

The three main actions on which GRV’s compliance strategy is based are: encourage compliance, prevent non-compliance, and respond to non-compliance.

Encourage is about ensuring that participants have the information they need to get it right. It is about making sure that they clearly understand their obligations and risks they face through non-compliance. GRV will assist participants by looking for risks, publishing best practice guides, giving clear policy guidance and, where necessary, by providing participants active or directive assistance to support them.

Prevent is about using what we know about participants and the sport to identify risks before they arise and intervening where possible to give participants an opportunity to correct their mistakes. GRV will prevent non-compliance by more actively assessing participants and their compliance history at the time of registration. GRV will also work to ensure that all relevant people involved in the sport must be registered with GRV.

Respond is about tailoring our enforcement, compliance activities and interventions to address specific behaviours and compliance risks. Intelligence gathering, swabbing and inspections are and will remain a key integrity check. GRV will review and consider taking action on all reported contraventions. Our strategy is aimed at ensuring a level playing field for participants and GRV is committed to acting against those who repeatedly have difficulty complying, who intentionally fail to comply, who fail to take action to avoid non-compliance or who put the welfare of greyhounds at risk.

Investigation

GRV undertakes a range of enforcement activities including random and targeted inspections, surveillance, on and out of race day swabbing and investigations based on reports from stewards.

Investigations are carried out by authorised officers to establish the elements of an offence or a range of offences. These investigations may rely on the collection of information and records, witness interviews, formal interviews, scientific investigations, property searches, and covert surveillance.

Authorised officers are fair, unbiased and competent and will exercise their functions and powers in a manner that includes being:

1. consistent with their safety, the safety of others and the safety of any greyhounds involved;
2. within their authority;
3. in accordance with the law and the Rules of Racing;
4. in accordance with the rights of the persons either under investigation or who are potential witnesses; and
5. in accordance with the provisions of natural justice, which include:
 - a. allowing a person, the opportunity to present their case;
 - b. ensuring objectivity in the decision-making process;
 - c. making decisions based on evidence; and
 - d. acting in good faith.

Determining whether to prosecute

After investigating, GRV will determine whether prosecution is the most appropriate enforcement action to take. The decision to commence prosecution is a discretionary one that is made considering a range of factors in each case, such as the nature of the offence, culpability of the alleged offender, the harm or potential for harm, prevalence of the offence and the negligent or wilful conduct of the alleged offender.

Prosecution is just one of the enforcement tools available to GRV to deal with non-compliance, and it is important to ensure a decision to prosecute is appropriate in the circumstances. GRV will exercise the discretion to prosecute in a fair, honest and transparent manner that considers the facts of an individual case.

Decisions about enforcement action will be impartial, based on available evidence, and on the functions and objects of GRV. In deciding whether to commence a prosecution, GRV will consider (where relevant):

- whether there is sufficient credible evidence to make the case;
- the actual or potential harm or impact and the steps taken to rectify or mitigate the impacts;
- prosecution as a proportionate response to the nature of the breach;
- whether the offence is strict liability;
- the availability and efficacy of any alternatives to prosecution;
- the extent of the risk to the integrity of greyhound racing or the wider industry;
- whether there is a reasonable prospect of the participant being found guilty;
- any precedent which may be set by not instituting proceedings;
- whether proceedings are to be instituted against others arising out of the same incident;
- whether GRV's informal enforcement measures such as directions were used and not complied with;
- whether the breach is a continuing or a repeat offence;
- the prevalence of the alleged offence and the need for deterrence, both specific and general;

- whether it is in the interests of GRV and the sport of greyhound racing.

The applicability of, and weight to be given to, the above factors will depend on the circumstances and facts of each case.

Key aim of prosecution

The key purposes for GRV prosecutions are to:

- achieve an outcome consistent with the objectives of the regulatory framework;
- prevent greyhound death, injury and disease;
- maintain the integrity of the sport;
- provide a message of deterrence to the industry to improve compliance;
- discourage repeat offences and/or recalcitrance by registered persons, and thereby to improve compliance;
- stop a continuing breach, or remedy the impacts of a breach;
- ensure a registered person complies with their duties and responsibilities; and
- promote a culture of voluntary compliance.

Choice of charges

Any charges laid against a participant will reflect the nature and extent of the conduct disclosed by the evidence.

There will be occasions where the same conduct is prohibited under several Rules and involves an offence under each. The participant may be charged under a single Rule or under multiple Rules. However, in circumstances where it would be inappropriate to lay both charges, GRV will exercise its discretion to lay charges for a breach of one of the Rules considering the seriousness of the alleged conduct and the penalties available for each offence provision.

GRV may also refer conduct to another enforcement agency for investigation and prosecution.

GRV's Lawyers

GRV employs lawyers to represent GRV at the Racing Appeals and Disciplinary Board (RADB). As registered Solicitors, these lawyers have professional obligations and duties to comply with the *Legal Profession Uniform Law Application Act 2014*, the *Legal Profession Uniform General Rules 2015*, and the *Legal Profession Uniform Conduct (Barristers) Rules 2015*.

GRV Lawyers, in undertaking a case for GRV against a participant, will:

- comply with their professional obligations and duties;
- act fairly towards the participant;
- present GRV's case with appropriate vigour;
- act objectively;
- subject to any claim of public interest immunity or legal professional privilege, or any statutory provisions to the contrary, disclose to the participant any material which is relevant or possibly relevant to an issue in the case, including information which is or is possibly exculpatory;

- assist the RADB, as much as practicable, to avoid appealable error;
- not make any submissions of fact or law which are not soundly based or supported by evidence;
- endeavour to ensure that proceedings are completed fairly and expeditiously; and
- avoid any real or potential conflict of interest.

Penalty submissions

GRV lawyers will make penalty submissions to the RAD Board balancing the aims of general and specific deterrence with the circumstances of each individual case and based on the circumstances of the individual case. The individual circumstances of the matter that will be considered in developing the penalty submission include (where relevant):

- seriousness of the alleged offence;
- the actual or potential harm or impact;
- steps taken to rectify or mitigate the impacts;
- any mitigating or aggravating circumstances;
- intention to engage in the conduct, such as for example, deliberate, reckless or wilful conduct or omission;
- any intention to deceive GRV;
- level of co-operation provided;
- previous compliance history and other previous conduct;
- whether the breach is a continuing or repeat offence; and
- the prevalence of the alleged offence and the need for deterrence, both specific and general.

GRV has developed Penalty Guidelines to provide information about penalty submissions to the RAD Board. These guidelines can be found at

<https://greyhoundcare.grv.org.au/policies-and-guidance/>