
Rebuttal to the Report of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales

NSW Greyhound Racing Industry Alliance



**THE INDUSTRY HAS CHANGED, IS CHANGING AND
CAN CONTINUE TO CHANGE**

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Summary for the Rebuttal

The Greyhound Industry has changed, is changing and can continue to change. Greyhound racing should be given a fair go to change rather than having our sport and industry closed down in NSW on the basis of a flawed report.

The Premier has declared his intention to ban greyhound racing in NSW mid next year. This decision is founded on the Report of the Special Commission of Enquiry into Greyhound Racing.

The Report of the Commission is a flawed document and should not be relied upon as a basis for making a decision or passing legislation through Parliament.

The Report introduces a concept into the legal system for the first time, that of “social licence”. This concept is undefined, untested, conceptual at best, lacks measurement and is highly emotive. To introduce it here raises questions such as; Does it actually exist?; Can it be transferred?; Who owns it for it to be lost?; and How can Parliament consider it without the ability to measure it?.

The Report introduces novel concepts in support of an attempt to discuss social licence. This could have unintended consequence for the people of NSW and potentially Australia whereby activists could exert undue influence on our legislative system that would result in the loss of our food security.

The Report is flawed and denies affected participant’s procedural fairness. Decisions by officials need to be unbiased and based on evidence. Rights of affected persons have been denied throughout the Report. Banning our industry without giving our sport a fair go will be just another denial of our common law right to procedural fairness.

The Report is also flawed because it is dismissive of the economic and social contribution the industry makes to our local community. When measuring our contribution to society it is only fair to look at both the positives and the negatives in determining our community contribution. The Report says we are not sustainable financially and the Commission was dismissive of our community contribution.

The industry is sustainable. We have a model that we were told would never happen to prove it. The model, developed by KPMG, demonstrates the industry is sustainable and can meet acceptable standards of animal welfare taking due consideration of wastage and rehoming.

We make a significant contribution to local communities and believe in our absence much pain will be felt in the many rural communities in which we operate, a fact that the Report fails to recognise

The Report is flawed in its determination that we are unable to change. There is evidence that we have already changed and this has been ignored, which brings into question whether we have been treated fairly.

The Commissioner appears to have failed to set any parameters by which our industry could be measured, be it in relation to animal welfare or our economic and community contribution. The Commissioner did state that the matter of setting these parameters was for the NSW Parliament. The NSW Parliament should have the opportunity to set these parameters.

The Report is flawed and any decision made by the NSW Government based on recommendation 1 is unsound and unfair, and a denial of procedural fairness.

We have a “zero tolerance” policy to live baiting – one mistake and you’re out for life.

The greyhound industry has supported the regulatory reforms placed on our industry, and this is further evidence that we can change. The option of deciding in favour of the remaining 79 recommendations in the Report is a real option.

We have a plan for a respected future:

- We are totally focused on animal welfare;
- We are aligned with the community’s expectations; and
- We are committed to a “total life cycle management” for all greyhounds.

The industry only asks that the Premier and NSW Parliament look to the option offered by adopting the 79 recommendations for reform in the industry so that we can provide the evidence that we have changed, are changing and can continue to change.

Rebuttal to the Report of the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales and the announcement by the Premier of New South Wales of his intention to ban greyhound racing in New South Wales

The Greyhound Industry has changed, is changing and can continue to change. Greyhound racing should be given a fair go to change rather than having our sport and industry closed down in NSW on the basis of a flawed report.

The Premier of NSW, the Hon. Mike Baird, MP (the Premier) has declared his intention, in response to the release of the Report of the Special Commission of Inquiry into the Greyhound Racing Industry in NSW (the Report) by the Honourable Michael McHugh AC QC (the Commissioner), to propose legislation in the NSW Parliament that will have the effect of banning greyhound racing in NSW from 30 June 2017. The NSW Greyhound Racing Industry Alliance (the Alliance) believes that there is evidence compelling the Premier to reconsider his decision. There are a total of 80 recommendations in the Report. The Premier has announced his intention to bring to the NSW Parliament legislation based on only 1 recommendation which provides for the closing down of the industry under certain conditions as opposed to adopting any of the alternative 79 provided in the Report which would see the many and varied benefits that Greyhound Racing brings to the social and economic fabric of NSW continue.

By way of background an ABC *Four Corners* piece on greyhound racing released in February 2015 saw the commissioning of an enquiry which some 15 months later resulting in the release of a report that is the basis of the Government's decision about the greyhound racing.

This rebuttal looks to four key points, each discussed separately but each having a significant interrelationship with the other points. Whilst the case made in this Rebuttal is believed to be sound it is not intended, nor does it try to represent the nature of any future action the Alliance may choose to take should the Parliament of NSW, after proper debate decide to pass legislation to close down the greyhound industry in NSW.

These four key points are:

- Social licence and other matters of unintended consequence
- The cost to the State of compensating victims
- Procedural fairness and the rights of all those affected by any decision
- That the industry has changed, is changing and can continue to change

SOCIAL LICENCE AND OTHER MATTERS OF UNINTENDED CONSEQUENCE

The concept of “social licence” has never been defined

Recommendation 1 of the Report requires “the Parliament of NSW to consider whether the industry has lost its social licence”. A “social licence” is not a statutory or legal licence but rather an expectation of certain sections of a community. It is not in the power of Parliament to grant a “social licence”, nor is it in their power to take it away. The Report states at Item 1.135 “it is a matter for the Parliament of NSW, as the representative of the community whether, on balance, the commercial greyhound racing industry has lost its social licence...”. Yet at Item 1.102 the Report provides for the concept of “mandate from the community” to describe “social licence”.

Further to this point the Report recognises Working Dog Alliance Australia’s (WDA) input and states their view in Item 1.101 as “...the general public, animal advocacy groups, animal welfare legislators and media are significant influencers on the industry’s social licence to operate...”. It is clear that there is no agreed definition for “social licence”.

There is no doubt it is different from a legal or statutory licence. There needs to be a clear separation between those who grant a social licence and those who influence the decision as to who grants any associated legal licence. The legislators and activists are influencers of social licence but not granters. There is no evidence that Parliament has even attempted to assess or debate the issue of social licence in relation to this issue.

It is critical that this enquiry does not become the precedent for governments and activists to remove from the community the community’s democratic right to grant a social licence. Parliaments must not be given the power to claim the right to pass legal licence legislation based on assumption of power over an undefined concept without procedural fairness evidence and consultation. The CSIRO is quoted at Item 1.104 “It is intangible and unwritten” and can “therefore be distinguished from a statutory licence”.

Social licence is a concept that has never been measured or granted

It would appear that social licence was probably first used in the mining industry to try to describe the relationship between a mining company and its operations with its broader community. There is no evidence to support there being a legitimate way of transferring it from one industry or community to another.

Social licence was not measurable then, and it is still not measurable. It is a highly emotive expression that suggests “good” if you have the licence and “bad” if you don’t. There has never been a social licence issued. Equally there has never been a social licence revoked. There are no alternative terms offered for it. It has not been deemed possible as yet to assign it or agree a definition.

No-one has ever seen a social licence and we do not know what form it exists in, if it does exist. No-one has ever seen, touched, smelt, heard, tasted or sensed a social licence. No-one has ever experienced an emotion that can be attributed directly to a social licence. It does not have a physical presence, and has no colour, shape or size. No-one has seen a photo or a picture of a social licence.

No-one has ever owned a social licence. A social licence has never been bought or sold, inherited, transferred, copied, faked or handed in. If it doesn't exist in reality, science or science fiction and isn't recognised legal terminology is it possible or even legal to pass legislation based on its consideration?

Significantly we can find no previous instance or precedent of it being used as a basis for a legal decision. Our legislators have never debated the matter, and the Premier has announced his intention to ban an entire industry based on the industry "losing its social licence". We believe there is no precedent for this. That the concept could "come into existence" in some form or another as the result of a vote in Parliament brings with it questions that can only be tested in the appropriate court.

Quite simply there is no basis to justify or support a decision where there is loss of an undefined concept that can't be measured or owned. It is not possible to consider the loss of a concept that simply does not exist. You can't lose something you can't measure, has never been granted, you can't own or doesn't exist.

The potential for significant unintended consequences if a precedent is set

The report includes as an element in its considerations that the Greyhound Industry has been "exposed as an industry that... has treated greyhounds as dispensable commercial commodities...". It is fraught with danger and a risk to our security and national economy to allow any Parliament to enact a ban on an activity based on it being exposed as a "dispensable commercial commodity". Society's entire food security is based on the concept of a "dispensable commercial commodity". In fact, when due consideration is given, our society is totally reliant on "dispensable commercial commodities" without any loss of social or legal licence.

Severely limiting the scope to the narrowest of closely aligned "commodities" we need to include our essential, everyday food animals such as chickens, ducks, beef cattle, lambs, pigs, fish, seafood, etc. as well as all the racing and working animals as "dispensable commercial commodities". The unintended consequences of legislation being modelled on this concept could threaten our egg and milk supply as chickens that are no longer fertile and cows that no longer produce milk pose a serious problem for the farmer. It must be noted that the entire group of vegetable matter is living, breathing and growing and would also be captured by the net of "dispensable commercial commodities".

The unintended consequences of allowing Parliament to unilaterally ban an industry, product or group based on no more than activists using their influence to assume a mandate over social licence and pairing it with a label of "dispensable commercial commodities" puts at risk the very fabric of our society.

THE COST TO THE STATE OF COMPENSATING VICTIMS

Financial consequences of a successful action in a court of law

The financial consequences for the State if the Alliance wins a case based on the financial losses of those affected by a social licence are thought to be extensive. A decision made in the favour of the Alliance could bring with it compensation claims from all those participants who had been affected by the ban, and this is thought to total a figure certainly in the hundreds of millions.

Our estimates consider an established industry with established participants. Ours is an industry with, at the time of the Premier's announcement, a positive gross contribution to our state in excess of some \$350 million per year and a net contribution of some \$135 million per year. The participants rely on the income they generate through participating in the industry over their lifetime of 40, 50 or 60 years or longer. Alternatively, if we consider that just the average income needs to be compensated for the 10,000+ affected participants over an average 30-year income period then the compensation runs into the millions.

If compensation were based on the net contribution of \$135 million over an average participant life of 30 years, the compensation would total marginally over \$4 billion. If you move to the gross contribution the economic contribution figure comes to a little over \$10 billion.

PROCEDURAL FAIRNESS AND THE RIGHTS OF ALL THOSE AFFECTED BY THE DECISION

The Alliance contends that the report raises significant issues that bring into question the Premier's stated intentions into question as well as the potential consequences should the NSW Parliament ultimately bring the proposed action to fruition. We consider that the Report is serious flawed and denies all affected people their right to procedural fairness because:

The Terms of Reference are too narrow and are leading

As stated in the Preface the Terms of Reference require the Commissioner to "evaluate whether the issues ... are able to be appropriately addressed, to permit the continuation of a greyhound racing industry in NSW that is sustainable and provides an ongoing economic and social contribution to the State". This direction has by its very scope not given equal opportunity to The Commissioner to consider the "options available to consider whether the greyhound racing industry in NSW can meet its obligation to be sustainable and provide an ongoing economic and social contribution to the State". Whilst the Preface statement is consistent with the Letters of Patent, in taking this approach the Terms of Reference have dictated a finding based around "permit to continue" rather than "options to continue". This has created a significant conflict of interest where the judge has been directed by the executioner as to what direction the result of his evaluation should take.

The terms of reference require prediction rather than evidence-based evaluation

The issues for consideration in the Terms of Reference provided to the Commission by the NSW Parliament are stated as “governance, integrity and animal welfare standards” and asks whether they are “able to be addressed” rather than “have been addressed” or “are able to have been addressed”. This requires a forward-looking prediction of human behaviour and the motivators that drive that behaviour. As is stated in Item 1.98 “The evaluation involves a value judgement”.

The Alliance believes that the first step in determining whether they are “able to be addressed” would be to look at the changes that have occurred in the industry since the release of the *Four Corners* report. The Report rather looks backwards at the history leading up to the *Four Corners* report and therefore requires the Commissioner to draw conclusions on future human behaviour based on a point in time, or a “value judgement”. The Commissioner is a well-respected and highly qualified member of the legal fraternity, but is not a psychologist with the qualifications to predict future human behaviour.

The Premier has then, based on an unqualified prediction of human behaviour, proposed to close down the industry based on, not the changes that can be evidenced since the release of the *Four Corners* report, but rather historic behaviour leading up to the *Four Corners* report.

Our legal system has long believed that human behaviour by its very nature is adaptable and changeable, otherwise all convicted criminals would need to be sentenced to life imprisonment. The decision by the Premier is tantamount to giving all criminals a death sentence based on the premise that mankind is incapable of reform. This is patently not true.

The Alliance contends that the proposition that the industry cannot change is not based on evidence

The Premier’s intention to ban greyhound racing based on the inability for the industry to change is not evidenced, not fair and in error. There is evidence to show that the Industry has changed, is changing and can continue to change. The Commissioner has been required by the Terms of Reference to determine “whether the issues ... are able to be appropriately addressed”. This then becomes not a matter of evidence but a matter of conjecture.

The Commissioner has repeatedly cited that in his opinion the industry cannot change and that therefore the Commissioner is capable of predicting the future. The Report has either failed to include or refused to accept any evidence that the Industry has changed and can continue to change and deliver a morally sustainable racing industry.

The Alliance submits that the Commissioner clearly demonstrates his proclivity to predict future outcomes including in his judgement an inability for the Industry to change. The figures and facts detailed in the report in themselves prove the very opposite. The data is old and the improvements and shifts that have been achieved since its drafting are entirely significant and prove that the industry has and is continuing to change rapidly. A few examples from just the Overview include:

1.10 “... and is unlikely in the future, to “appropriately” address the problem of wastage”

1.11 “... the task that GRNSW faces is, for practical purposes, unsurable.” (sic)

1.18 "... can continue for the foreseeable future."

1.35 "... that sections of the industry, perhaps large sections, are hostile to change that is necessary, if the industry is to continue."

1.45 "... It is another matter to carry them out in the face of a recalcitrant industry."

1.63 "...the Commission thinks that these innovations, even if successfully implemented, will have only a small effect on wastage rates."

1.94 "... It seems highly probable, however, that, although the industry would continue to make a positive economic contribution to the State if allowed to continue, it would not be able to maintain its previous level of contribution..."

1.113 "... has failed to demonstrate that in the future it will be able to reduce the deaths of healthy greyhounds..."

1.113 "...has caused and can continue to cause injuries to greyhounds that range from minor to catastrophic"

1.125 "...it appears unlikely that this issue of the large scale killing of healthy greyhounds by the industry can be addressed successfully in the future."

1.1.26 "... that it is doubtful whether it can be reduced in the future to an extent that the community might possibly regard as tolerable."

The Premier has announced his intention to pass legislation to ban greyhound racing to the NSW Parliament based on the Commissioner's prediction that the Industry cannot change or undergo reform. It needs to be pointed out that legislation needs to be debated by NSW Parliament, and that debate is made robust by being based on fact and evidence.

The work of the Commissioner is, by his own admission, "a value judgement" or prediction about the industry's ability to commit to change and undergo reform. Yet at Item 1.120 the Commissioner states "Under the leadership of Mr Paul Newson..." GRNSW has undergone significant change, most of it for the better." Further he adds at Item 1.122 "GRNSW has access to potential funding that previous Boards and management did not and are able to carry out reform that was probably beyond the financial ability of GRNSW before February 2015. ... But that said, what GRNSW has achieved since February 2015, what it is doing, and plans to do deserves praise."

Whilst the Commissioner acknowledges that the industry has changed since February 2015 and is capable of change, and that that change started shortly after the release of the *Four Corners* report in February 2015 there has been no genuine addressing of the impact of the reforms that have been implemented. It is an unconscionable act to ban an industry based on its inability to change if the Report itself also notes that change has occurred and deserves praise, and, at the same time does not take into account the impacts those changes have had over the reporting timeframe.

The decision by the Premier to ignore the direction and positive impact of changes that have occurred in the industry and their impact now and in the future on the key issue of animal welfare can only be reasonably explained by the existence of a pre-existing bias towards a particular outcome.

The Report has either failed to fairly consider that or refused to attribute to the industry any of the reforms the industry has undertaken can deliver a sustainable racing industry at the same time as animal welfare standards can be met.

In relation to breeding reforms the Report notes significant reforms. At Item 1.48 the Commissioner notes “Commencing in July 2015, the year on year average monthly percentage to April 2016 decreased by 48 per cent. And the figures for March 2016 (69 per cent) and April 2016 (66 per cent) indicate that the negative trend is continuing”. He then continues at Item 1.50 to state “Further, the Commission’s analysis of GRNSW’s breeding and licensing requirements and other breeding restrictions suggests that it is unlikely that they are responsible for the recent reduction in litters.

The Commission considers that it is more likely than not that uncertainty as to the continued existence of the industry in NSW is a more significant contributor to the drop in whelpings.” Here is a clear and evidenced example of industry reform that the Commissioner has not to credit to the industry. The Commissioner has not acted on evidence but rather make a “value judgement” to consider this has happened as a consequence of his duties rather than a demonstration of serious reform undertaken by the industry stakeholders.

It is obvious that a decrease in whelping numbers will be a lead indicator to reform. Some reforms will take longer to show in the figures as their lead or lag times vary according to the time taken for that key indicator to work its way through the life cycle.

In relation to the issue of Live Baiting the most often quoted figures relate to Item 1.53 which states “testified that he thought about 10 to 20 per cent of trainers engaged in live baiting.” The Industry agrees that reform was necessary in this aspect and believes reform has taken place.

During the reform period, GRNSW conducted 268 investigations over the 2015-16 financial year. It is our understanding that there are 2 open investigations pertaining to live baiting and charges are yet to be laid. These industry-led reforms are not considered in the Report yet the decline in live baiting is considered to be from the estimated 10 to 20 per cent to a current 0.75 per cent. The industry accepts 1 is too many and is committed to reforms that see the current rate at zero per cent and any practitioner of live baiting prosecuted and banned from greyhound racing for life.

In relation to injuries and tracks the Report at Item 1.72 states “... they suggest that over 21 per cent of greyhounds who compete at any meeting are likely to suffer an injury, ranging from minor to catastrophic resulting in severe pain for the greyhound.” Since the release of the *Four Corners* program significant reform has been undertaken by the Industry to upgrade tracks where possible.

There has also been a system of pre-race track inspections implemented to ensure animal welfare and safety is a priority. This has seen a significant decrease in the number and per cent of injuries of all sorts. The injury incidence rate has fallen to 2.7 per cent with 11.2 per cent of dogs injured between January 1, 2015 and March 1, 2016.

Wastage is a recognised issue and a lag indicator rather than a lead indicator. Quantifiable reductions in wastage will arise over time as current reforms see the reduction in whelping numbers feed through all aspects of the life cycle. It needs to be noted in regards to wastage that on the first page of the Report at Item 1.5 we are told "... most of the time I'd drown the pups".

This is a highly emotive piece of evidence, yet we now know that this particular breeder identified as "Ernie" is reported to have "made his confession more than 10 years ago in a report compiled by the University of Toronto." and further reports "The fact that the breeder was American ...". To present such material in such a way to the people of NSW is misleading, and a flaw in the Report.

In relation to rehoming the Report at Item 1.28 states "That leaves about 78 per cent to 82 per cent of dogs that are whelped each year that have to be retained as breeders or pets, find a home elsewhere, or be destroyed." It is a known fact that greyhounds bred in NSW are often sent interstate for breeding and racing purposes. This is not appropriately considered.

Nonetheless industry reforms since February 2015 have seen GRNSW increase funding for rehoming of greyhounds that has resulted in a 132 per cent increase in rehoming numbers. More significantly, the 46 per cent reduction in whelping numbers significantly reduces the demand for rehoming at the end of a racing greyhound's career, without necessarily reducing the demand for breeders. Whilst again a lag indicator, the reforms undertaken in total life cycle management will see a dramatic reduction in the demand for rehoming. By merely maintaining the current reduction in whelping numbers and making no other changes we would see a drop from the stated approximate 80 per cent rehoming to under 38 per cent over time.

In regards to the education of industry participants the Report at Item 1.35 states "Nonetheless, it tended to confirm what other evidence before the Commission has indicated – that sections of the industry, perhaps large sections, are hostile to change that is necessary, if the industry is to continue." This is entirely a value judgement and does not reflect the reality today. The fact that the Alliance represented here is a united group representing the vast majority of the industry would suggest this statement to be conjecture and not based on evidence.

As has been discussed above there is evidence that whelping numbers are substantially down, injuries have been reduced substantially and live baiting is all but eliminated. There will be flow on effects into wastage and rehoming from the substantial decrease in whelping numbers, and significant improvements to the levels of all these issues as the reduced whelping numbers moves through the industry over time. This is an integrated solution driven directly by members of the greyhound racing fraternity.

There is evidence that reform has not only taken place but has worked. Unfortunately, the Commissioner was commissioned to evaluate where the industry was at a point of time and predict where he thought it was going, and in the Commissioner's "value judgement" he states it was "unlikely" that effective reform could be the case. The Premier has then relied on the Commissioner's predictions to support his decision to propose to ban greyhound racing.

The evidence from the post February reform period shows that the Report is flawed and is a clear statement to the community and "social licence" influencers that the industry has heard their calls loud and clear and acted with speed and commitment to bring about a position which deserves a continuation of the "social licence".

The Alliance contends that the Commissioner has been dismissive in his consideration of the economic and community contribution the industry delivers

The Commissioner's report has been weighted towards the issues aspect (governance, integrity and animal welfare) and the importance of the economic and social contribution the industry brings to the state as required by the Terms of Reference has been considered as a side issue.

The greyhound racing industry brings economic and community contributions to our State that warrant proper evaluation, and due and proper consideration. It seems incongruent at best that it is thought even possible at any level to consider the "social licence" of an industry in the absence of any detailed evaluation of the social contribution made by the industry.

In relation to economic considerations our industry is represented by 34 clubs that are both metropolitan and rural. By their very nature our contribution to each of these communities is as different as the communities themselves are. A modest economic contribution to a country town can have a far greater impact on the local community than a larger one will in a metropolitan setting.

We employ some 10,000 people across the State. Our membership tells us the vast majority of our employees fall into high risk unemployment categories. Most of the permanent staff have been with us for a very long time, and are in the 50+ age group. Redeploying these staff members will be not only difficult for placement agencies but either impossible or highly stressful for these employees and their families.

There is no consideration given to their sense of self-actualisation or self-worth as they are displaced by the Premier. At the other end of the employment spectrum in our industry are part-time and casual employees, most of whom are in the 18 to 20 age bracket and are paying their way through University or TAFE.

We are estimated to contribute in excess of \$350 million to our state and over \$30 million to state taxes. Our net contribution to the state is over \$140 million. This does not include the spending our participants undertake. Our owners, breeders and trainers buy locally which not only supports local businesses and industries but is typically home grown Australian product.

This is a particularly significant factor in regional and rural NSW and there is the potential for industries that rely on greyhound racing participants for their livelihood, for example pet food suppliers, pet food manufacturers, vets, pharmacists, butchers, dog walkers, suppliers of food and refreshments on race days, maintenance for the tracks and stands, bookies and their staff, trailer makers and maintainers, carpenters, and many others.

There are also the many sponsors who have linked with greyhound racing for many and varied reasons. Local clubs, businesses, families and charities often use local greyhound racing facilities. For some they would be reaching their target audience, others benefit sufficiently from the two-way business with greyhound racing that putting something back in shows their dependence on the industry. Obviously none of the individuals in this extensive list of community members, many of them involved in the animal welfare industry would consider the social licence is so diminished as to close the industry down.

Then there are the part-time participants, many of whom supplement their incomes through Greyhound Racing and in the absence of greyhound racing would need government and/or community support.

The reality is ours is not an industry in debt and/or looking for special financial handouts. We are financially secure, run a structural surplus and make a positive financial contribution to state revenues. Additionally, with the Intercode Agreement current split we receive significantly less than our relative contribution. So we are propping up the other racing codes, just another demonstration of our economic sustainability and contribution to the community of NSW.

Socially we cater for a demographic that has been with us for decades. The Commissioner states at Item 1.119 “The benefits that the industry brings to the State are chiefly, but not exclusively, economic.” The Terms of Reference require an evaluation which includes consideration of the “ongoing economic and social contribution”, yet the Commissioner suggests he has not been able to find any significant social contribution that the industry delivers to the state.

The Commissioner finds only 4 aspects that can be attributed to a social contribution, they being: the pleasure afforded to the industry participants; the pleasure arising for the racegoers from watching a competitive race; the pleasure involved in wagering and the contribution to the social fabric of country towns where greyhounds race or are trained.

The industry submits that the social contribution made by greyhound racing is, whilst most prominent in the rural sector of the state, far-reaching and deeply woven into the state’s social fabric, a matter the Commissioner dismisses as not significant.

It seems incongruent and unfair that it is thought even possible to consider the “social licence” of an industry in the absence of any detailed evaluation of the social contribution made by the industry.

The Industry in NSW is a collection of clubs some of which, up until now, have been aligned and some of which are independent. The social contributions the industry makes can be attributed to the individual efforts of each club, and in that way each club is able to provide community benefits that best suit the ability of the club and the needs of its community.

Our membership proudly tells us their community contributions include, but are not limited to:

- Rent paid by greyhound clubs keeps community park facilities open and available to the local community
- Providing facilities for meetings for groups both in and outside the greyhound industry;
- Providing free of charge to school/vacation care centres in holidays;
- Running raffles for other groups such as legacy;
- Sponsoring signs and making donations for causes like Children's Hospital wards;
- Facilitating retirement village and nursing home residents to come to race meetings;
- Providing special-purpose facilities to make racetracks family friendly;
- Organising social events for businesses and their staff;
- Promoting the "Arrive Alive" campaign;
- Supplying raffle prizes to local clubs and organisations;
- Offering opportunities in the work for the dole scheme;
- Running go kart races on the track;
- Running a festival of ability for people with disabilities; to name just a few.

The Industry makes a substantial contribution to the community and, whilst not necessarily quantifiable, particularly in dollar terms, it needs to be recognised that the nature of the industry puts it in an almost unique position to tailor its community contribution to the needs of the particular community it operates in. To suggest, as the Commissioner does that "the benefits that the industry brings to the State are chiefly, but not exclusively, economic" has belittled the considerable effort that the industry makes and the value of the benefits the community receives as a result of the community contribution the industry undeniably makes.

The Commissioner fails in his report to evaluate the pain, both financial and in torn social fabric many communities will suffer as a direct consequence of losing the benefits greyhound racing currently brings to their communities.

The Alliance contends the deception perpetrated by Greyhound Racing NSW (GRNSW) has been a significant barrier to the reform process being undertaken by the industry.

The Report recognises the importance of GRNSW as the regulator, evaluated at length the role of the regulator in the body of the Report and evaluates the difficulty it would seem to have in fulfilling many of its roles including but not restricted to the administrative and policing roles.

It should be noted that GRNSW is the receiver of the funds allocated to the industry and then apportions these funds down the chain to the clubs and other parties in accordance with the policies and practices it is legislated and/or regulated to undertake from time to time.

The Commissioner at Recommendation 65 states "The regulatory and commercial functions of Greyhound Racing NSW should be separated. A separate regulator, the NSW Greyhound Racing Integrity Commission, should be established. It should not be independent of Government but it should be independent of Greyhound Racing NSW."

GRNSW is the current recognisable representative of Government in Greyhound racing. It is empowered by and answerable to Governments then and now and has been the responsible body for the conflicting roles of Regulator, Administrator, Marketer, Funds Controller and Compliance Enforcer. This significant conflict of interest is, in part, responsible for allowing the Industry to lag behind in acceptable social practices.

It is not for the Alliance to criticise GRNSW but to recognise and see recognised generally that it has relied on GRNSW to provide the oversight that the Alliance understands is its legislated role. The industry has worked with GRNSW and allowed it to and supported it in its policing policy and procedure whilst the industry got on with its business of racing greyhounds.

The Commissioner at Item 11.32 of Volume 2 states “The Commission received and assessed a considerable quantity of data... The data was not sufficiently robust to allow the Commission to determine the precise number of greyhounds that are destroyed each year in this State. This was largely because of GRNSW’s failure to maintain complete lifecycle records over many years and its failure to ensure that industry participants accurately reported relevant lifecycle information.” This is a clear admission by the Commissioner that the basis of the entire Report have been founded on numbers for whelping, wastage, injuries and rehoming that are at best unestablished and according to our research wrong. The recommendations must be based on evidence and any subsequent decision must be also be based on evidence. The Commissioner’s admission is a clear statement that there is no evidence as to numbers, and any action by any official on this basis fails the test of procedural fairness.

We assert the Commissioner did not investigate the volume of wastage. Nor did he properly investigate live baiting.

For the Premier to then announce his decision to ban greyhound racing based on data that is admitted as “not sufficiently robust to allow the Commissioner to determine” is unfair. Until such time as accurate numbers for wastage, whelping, injuries and rehoming can be established with accuracy and evaluated against those rates and levels set down by the NSW Parliament it is unfair to make a decision to close down greyhound racing.

It is worth noting here that the Intercode Agreement provides the funds for the Industry, and those funds are administered by GRNSW. It is that funding that then empowers GRNSW to undertake its multitude of tasks as well as provide the funding back to the Alliance members so they can function. Any disproportional funding provided to GRNSW will have a detrimental impact on its ability to not only function, but also undertake some or all of its responsibilities to the industry.

At present greyhound racing accounts for approx. 22 per cent of relevant revenue that is subject to the Intercode Agreement and receives back only 13 per cent. This means the industry gives up over 40 per cent of its contribution, a sacrifice that is not evident in other States and no doubt exacerbates GRNSW’s difficulties in allocating necessary resources to its many tasks. As can be seen, the model delivered to the industry by the then Government of the day has been a significant contributor in slowing down the industry’s ability to recognise and respond to the need for change, and consequently its opportunities to reform.

The deceptions of GRNSW described in the Report have had a significantly adverse impact on the reputation of the industry, and are a considerable contributor to the situation the industry currently finds itself in. The Alliance submits that the Government has the ability to influence the many and varied duties of GRNSW, and accordingly it is these institutions who need to accept much of the responsibility for what are described in the Report as the failure of the industry to keep up with community standards.

The message has got through loud and clear, the reform started in February 2015 when the message was broadcast by the ABC. We believe the Government should fulfil its responsibilities to both GRNSW and all the participants in the industry by providing proper supervision, funding and guidance that has been a primary reason for the industry falling short of community expectations.

The Alliance contends that the Commissioner and NSW Parliament have failed to set levels for key issues

The report requires the NSW Parliament to set levels or rates for key issues, and in so doing has denied all parties the right to evidence as to what constitutes an acceptable community standard. When considering social licence as the basis of any action it is imperative to consider how our communities function. Members of the community have the right to know, if they are thought to have done wrong, what they have done wrong, what is expected of them to fix the problem, how long they have to take action and what performance characteristics represent the social norms needing to be met to demonstrate that they have the right to continue to function in that democratic society.

The Commissioner in his report fails to provide the parameters so necessary for a value judgement of whether community expectations have been met or otherwise. The absence of these parameters results in the Premier announcing a decision which fails to pass the test of procedural fairness in that in the absence of parameters no one can compare our performance against those that social norms would require. Accordingly, the Premier has no way of determining the extent to which the industry may or may not have met or exceeded community expectations.

Furthermore, as a consequence of there being no parameters the Premier is incapable of giving proper consideration to viable alternative actions that empower the industry to meet those social norms in a reasonable and agreed timeframe. It is not possible to evaluate socially-acceptable practice in the absence of a set of parameters to define community expectation, and in a circumstance where it is not possible to evaluate community expectation it is not possible to consider social licence.

The Report is flawed in that the Commissioner has completely failed to provide any parameters that define what socially acceptable practice is. The Overview provides evidence of this failing, and the references to what could at best be described as an attempt to set parameters for the issues is not limited to:

1.9 “After evaluating the relevant parts of this mass of material, the Commission has concluded that, unless the number of greyhounds being bred in this State is reduced by a very large number...”

1.12 “The reason for this is that the industry in NSW presently needs and, without a dramatic reduction of the race meetings that it holds,…”

1.88 “That information shows, however, that the industry still directly employs many persons on a full-time, part time or casual or voluntary basis.”

1.94 “… if allowed to continue it would not be able to maintain its previous level of contribution to the State’s economy in future years.”

1.112 “The trend appears clear; throughout the world, social licences of the commercial greyhound industry are being withdrawn”

1.116 “A significant number of owners have exported greyhounds…”

1.126 “that the so-called wastage of greyhounds cannot be eliminated or substantially reduced at present…”

1.127 “Moreover, not only is the rate of wastage unacceptable, as GRNSW has acknowledged, but the industry has an injury rate that is also unacceptable…”

1.129 “Ultimately, it must be a matter for the Parliament of NSW to determine what acceptable level of wastage is and what is an acceptable rate of on-track and trial injuries.”

1.130 “…in a way where the historic dual evils of overbreeding and wastage can be reduced to a level with the standards of reasonable community members.”

The Commissioner does not discuss or disclose what parameters should be set for the key issues. The report at Item 1.98 states “It requires the Commission to make a finding as to what is feasible in terms of implementing governance, integrity and animal welfare standards for the industry and then making a judgement whether they are suitable or proper in all circumstances.

The Commission considers that animal welfare must be given the greatest weight in making this value judgement. Further to this the Commissioner states at Item 1.129 “Ultimately, it must be a matter for the Parliament of NSW to determine what acceptable level of wastage is and what is an acceptable rate of on-track and trial injuries.”

The Premier’s announcement to pass legislation to ban greyhound racing has failed to determine what either acceptable levels are or alternatively allow the industry can show it can meet or exceed the parameters once they are established. We submit that both the Report and the principle of procedural fairness require the Premier to agree a set of parameters for key social performance indicators and agree a timeframe for the industry to meet or exceed those parameters. There would then need to be an assessment of whether the industry had met the community expectation by meeting or exceeding those parameters. Only then would it be fair for the Premier to decide the fate of the industry and progress to his statutory licence role and look to pass legislation in Parliament to close down the industry.

The Commissioner clearly charges the Parliament with the responsibility at Item 1.129 when he states “Ultimately, it must be a matter for the Parliament of NSW to determine what acceptable level of wastage is and what is an acceptable rate of on-track and trial injuries.” Up until such time as Parliament and the industry consult and agree these and other key issue “levels” or

“parameters” and a timeframe by which the industry’s ability to meet these agreed parameters is evaluated the announced proposed actions by the Premier deny the industry, all its participants and the NSW community as a whole of its right to procedural fairness.

The Alliance contends that its members and the 10,000+ participants in the industry have been denied their democratic right to procedural fairness

The Alliance members and the 10,000+ participants in the industry who will be adversely affected by the Premier’s announcement of his intention to ban greyhound racing have been denied their democratic right to procedural fairness. When all the pieces presented previously are brought together it forms a pattern that needs to be explored, explained and more than likely appropriate action taken. The alliance submits that:

- The NSW Parliament in setting the Terms of Reference have narrowed the scope of the Commission and led the Commissioner towards a recommendation where he is required to consider the closing down of greyhound racing in NSW. His evaluation is required to address “permit the continuation of a greyhound racing industry in NSW” rather than a fair scope of recommendations that could “consider the options available for greyhound racing in NSW”, and we believe that this is bias;
- The Commissioner’s assistant Mr Rushton, SC, Counsel Assisting is considered to be of a closed mind and has influenced the direction of the Commission towards a recommendation of closing the industry, and this is reported by the Commissioner when he states at the end of Item 1.50 “In his Opening Address to the Commission, Mr Rushton, SC, Counsel Assisting, made it clear that recommending closing down the industry was a real option for the Commission”, and this attests to both a closed and directing mind as well as bias;
- The Commissioner states that there is “value judgement” required on his part in order to provide the evaluation in the Report. This results in the use of such terms as “unlikely” when describing the industry’s ability to meet community expectation, and we believe that in order to provide an evaluation that can be relied upon as fair by all parties for decision-making it must be based on evidence;
- The Commissioner at Item 1.129 states “Ultimately, it must be a matter for the Parliament of NSW to determine what an acceptable level of wastage is and what is an acceptable rate of on-track and trial injuries.” We believe the Parliament of NSW has failed to determine or set what either the acceptable level of wastage or the acceptable rate of injuries is. In the absence of these parameters it is not possible to determine with any sense of fairness whether or not the industry has or has not met the levels and rates that are considered acceptable, and therefore it is not possible to provide evidence as to the industry’s ability now or in the future to meet standards that are not defined;
- We believe the Recommendation 1 is based not on evidence, but rather on “value judgement”. The alternative 79 recommendations bring with them the ability to measure and then evidence the industry’s performance against community standards. It is unfair to hand down a decision that has no evidence to substantiate it;

- The Premier has announced his decision publicly, and has announced this decision based on Recommendation 1, which is of itself based on a flawed report and not based on evidence. Procedural fairness is there to ensure people are not adversely affected by decisions that are not based on evidence, and we believe the absence of evidence to support the decision of the Premier brings into place the “no evidence” rule of procedural fairness;
- The Parliament of NSW has failed to determine the parameters the Commissioner requires in order to establish what community standards are. We believe that in the absence of these parameters it remains impossible to gather any evidence that relates to our meeting community standards and the Premier has not and cannot provide the evidence he must produce when “considering whether” the industry has lost its social licence, which we believe also brings into place the “no evidence” rule;
- The Premier has failed to provide any evidence that the industry has in fact “lost its social licence”, or that there is even any validity to the concept of social licence. In the absence of any parameters the Premier cannot evidence what levels and rates are acceptable and what are not. The absence of these parameters means the Report is flawed. NSW Parliament’s failure to set these same parameters mean any decision by the Premier or the NSW Parliament is made in the absence of evidence, which is unfair and brings into place the “no evidence” rule.

That the process that has ultimately resulted in the decision publicly announced by the Premier could be the result of so many contraventions of our right to procedural fairness makes it apparent that this is a matter that either:

- Needs to be addressed in a court of law where the validity of using the social licence concept and the fairness exercised by the decision-makers can be properly evaluated and the rights of our members and the many thousands of adversely affected individuals is tested, or
- A set of parameters in line with community expectation are set down and the industry is given a fair and reasonable timeframe to meet these parameters and therefore community expectation.

THE INDUSTRY HAS CHANGED, IS CHANGING AND CAN CONTINUE TO CHANGE

Racing to a respected future – our proposal for reform

The Alliance is committed to the future of Greyhound Racing in NSW. We know that the industry has changed, is changing and can continue to change. The *Four Corners* broadcast was the start of a new world for us.

The Premier’s announcement of his intention to ban greyhound racing, which we believe denies the industry procedural fairness, has been made without consultation and has denied us the right to demonstrate that we have heard the community’s message and are able to not only meet the community expectations but exceed them.

We heard the community in February 2015 and the reform which started back then has been particularly swift and effective for an industry as traditional as ours. Live baiting is a criminal offence that has no place in our industry, whelping numbers are almost halved in the first year of reform, rehoming numbers have increased, and many racetracks have been and are being upgraded resulting in a substantial decrease in injuries.

We have adopted a policy of “Zero tolerance” in respect to matters defined as ‘animal cruelty’ - one mistake and you’re out for life. We love our industry and we love our dogs. We have been accused of “drowning pups” to find out it was an act committed in America and compiled in Canada. The reforms we have undertaken to date will see significant improvements in animal welfare as they feed through the years ahead.

We have a commitment to the whole of life management of greyhounds. We know that whelping numbers have a critical impact on both wastage and rehoming demand. We have a definitive working model that demonstrates we can achieve the reforms that will deliver the changes needed to meet community expectations. The GA project has delivered a life cycle management tool that delivers a model that predicts the effects on life cycle based on whelping numbers, numbers of races, number of tracks, etc. This life cycle management tool, the GA model is the result of the modelling done by KPMG.

Definitive results of running the model show that an achievable reduction in whelping numbers can sufficiently influence overall wastage so as to bring it down to acceptable levels for animal welfare. Having achieved this outcome, we have another reason to assert that the Report is flawed. The Commissioner has used his value judgement and predicted that a model could not be developed. In doing so he has once again failed to use evidence for the basis of Recommendation 1, and any decision that is made based on the recommendation is unfair and not based on evidence.

Legislation already exists that makes live baiting a criminal offence. We support that legislation and have “zero tolerance” to live baiting.

The Commissioner proposed 80 Recommendations only one of which was for Parliament to consider whether we had lost our social licence and should be no longer permitted to operate in NSW. The other 79 recommendations provided for a structure that permitted the industry to continue with its process of reform, allowing us to demonstrate that reform was not only possible but could become part of who we are.

We are accepting of our responsibilities to animal welfare, the community in which we operate and the broader community in which we live. We understand that community expectations have moved and it is an imperative that we move with them. We understand that the community has granted us provisional status and we only ask that we are given the opportunity to reform with the knowledge we now have.

The Commissioner by his own admission stated it was his “value judgement” that we could not change, and he made that statement unbelieving of the changes that were occurring at the time. We have changed, are changing and can continue to change. We only ask for the opportunity to prove to NSW community that we have heard you and we understand.

We, the Alliance, ask for the upholding of the principle of procedural fairness. We, the Alliance, ask for a chance for the industry to prove itself worthy of achieving respected status in our community. We, the Alliance, ask the Premier and Parliament to consult with the industry, agree a set of parameters which define social norms the community expects the industry to perform to and agree a timeframe for the industry to meet those parameters.

The Alliance believes an action of this kind is not only in line with community expectation and social norms, but fair. It is only with an evaluation of the industry's performance after the agreed timeframe against the agreed parameters that it is possible for the influencer with legislative power to consider with any credibility whether we have or have not gained the respect of the community. The Commissioner charged the Premier with the responsibility to set parameters and we wish to consult with the Premier and look forward to helping him fulfil this responsibility.

The Alliance, on behalf of the industry, submits that the appropriate course of action for the NSW Parliament is therefore found in following the other 79 of the 80 recommendations of the Report and propose as part of the industry reform process:

1. Proper consultation and consideration as to the recommendations that are adopted as a consequence of the release of the Report;
2. The setting of parameters that define socially acceptable norms;
3. An agreed period of probationary status, a probationary social licence if you will;
4. A review or evaluation of the industry's performance against the agreed parameters over an agreed timeframe; and
5. A qualified and evidenced decision based on the evidence an evaluation of those parameters being met, exceeded, or otherwise.

We believe this approach will allow the industry to provide the evidence to prove that we are:

- Totally focused on animal welfare;
- Aligned with the expectations of the community; and
- Committed to the "total life cycle management" for all greyhounds

It is a fair and reasonable request to be given the opportunity to prove that the industry is adaptable, capable of change and that the Commissioner's "value judgement" of the participants in the Greyhound Racing Industry was at best a poor prediction and at worst just plain wrong.

The industry has changed, is changing and can continue to change.