

# GREYHOUND OWNERSHIP SYNDICATE AND PARTNERSHIP REGULATIONS

## DRAFT PURPOSES

18 July 2013

### Definitions

**"Accounts"** has the meaning given in R.5(b).

**"Company"** means a company incorporated or registered under any Act or Ordinance of any state or territory of the Commonwealth of Australia or New Zealand whilst it remains so incorporated or registered.

**"Firm"** means one or more Natural Persons, not exceeding twenty, carrying on business in Australia under a firm or business name which is registered under any statute or ordinance of any State or Territory of the Commonwealth of Australia or New Zealand.

**"Manager"** means:

- (a) the first-named Natural Person recorded by the Controlling Body in the official ownership records, including any transfer or lease of a greyhound; or
- (b) if the greyhound is owned or leased by a Syndicate:
  - (i) unless paragraph (ii) applies:
    - (A) the first-named Natural Person recorded by the Controlling Body in the official ownership records, including any transfer or lease of a greyhound; or
    - (B) if the no Members are Natural Persons, the first named Natural Person recorded in official government registration records as a member of the first-named Syndicate Member; or
  - (ii) the person appointed to be the Manager by the Syndicate and whose details have been recorded by the Controlling Body.

**"Member"** means any person over the age of eighteen years who has an interest of any kind and to any extent in a Company, Firm, Syndicate or other association of persons, whether such interest be by way of membership, individual or part-ownership, sharing or stockholding, and an officer; of a Company (as defined) shall be deemed to have an interest in that Company: and 'membership' and all other derivatives and applications of the word "member" shall be construed accordingly.

**"Natural Person"** means an individual person in their own right over the age of eighteen years.

**"Offer Document"** means a written notice or other instrument that:

- (a) offers for issue, or invites applications for the issue of, any interest in a Syndicate; and
- (b) is in a form approved by the Controlling Body with whom the Syndicate is subsequently registered.

**"Offeree"** means a person who is offered a Syndicate interest.

**"Participant"** means any person who holds a beneficial interest in a Syndicate, whether jointly or otherwise.

**"Partnership"** means two or more Natural Persons who are joint and several co-owners of a greyhound, that own a greyhound in partnership whether or not they are a partnership under any statute or other law.

**“Person”** includes any Syndicate, Company, a combination of persons, firm owning or leasing greyhounds.

**“Personal Offer”** means an offer that:

- (a) may only be accepted by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in the offer, having regard to:
  - (i) previous contact between the person making the offer and that person; or
  - (ii) some professional or other connection between the person making the offer and that person; or
  - (iii) statements or actions by that person that indicate that they are interested in offers of that kind.

**“Promoter”** means any person or company who makes one or more offers for issue, or invites any applications for the issue of, any interest in a greyhound.

**“Public Syndicate”** means a Syndicate:

- (a) in which all of the Members of the Syndicate did not do so by way of a Personal Offer; or
- (b) has more than 20 Members.

**“Syndicate”** includes any one of the following that owns or leases a greyhound or an interest in a greyhound:

- (a) A Company.
- (b) A Natural Person or combination of natural persons not exceeding twenty.
- (c) A Firm.
- (d) A scheme or arrangement described in R2.

**“Syndicate Agreement”** has the meaning given in R3(c).

## PROPOSED RULES

### R.1 GREYHOUND OWNERSHIP

A greyhound shall not be entered or race unless owned under these Rules by:

- (a) a Natural Person;
- (b) a Partnership not exceeding 10 partners; or
- (c) a Syndicate that has been registered in accordance with these Rules.

N.B. Partnerships must still appoint a Manager pursuant to R.4.

### R.2 EXTENDED DEFINITION OF SYNDICATE

Every Natural Person who has a right to participate or an interest (whether actual, prospective or contingent) with a combination of persons not exceeding twenty:

- (a) in any undertaking or scheme relating to the racing of one or more greyhounds;
- (b) in any common enterprise in relation to one or more greyhounds in which that person is led to expect benefit or advantage from the enterprise or the promotion of it; or
- (c) in any arrangement in relation to one or more greyhounds that in substance involves the investment of money in circumstances in which that person will or may have an interest in one or more greyhounds or any benefit or advantage from the racing of it,

shall be deemed to be a Member of a Syndicate and the Syndicate shall be deemed to be the owner or lessee and to enter or race (as the case may be) the relevant greyhounds.

### R.3 SYNDICATE REGISTRATION

- (a) A Syndicate (other than a Partnership not exceeding 10 partners) must not race a greyhound unless the Syndicate has first been registered with a Controlling Body.
- (b) Application for registration of a Syndicate shall be made in writing in the prescribed form signed by all Members of the Syndicate. If a Company is the Syndicate or is a Member of a Syndicate, the Company must sign the application in accordance with section 127 of the *Corporations Act 2001*. The application shall be accompanied by:
  - (i) a copy of the Syndicate Agreement;
  - (ii) an address to be the registered address for the Syndicate;
  - (iii) the prescribed fee;
  - (iv) details of registration of the Syndicate by any other Controlling Body;
  - (v) the extent applicable, the Certificate of Incorporation or Certificate of Registration of the Company or Firm, the Certificate of Registration of the Syndicate's business name (if any), all authorised records confirming renewal of the foregoing, and the Syndicate's constitution (if any); and
  - (vi) in the case of a Public Syndicate, a National Police Certificate (NPC) Probity Check of discloseable court outcomes in respect of the Manager.

- (c) The Manager shall lodge an agreement in a form prescribed by the Controlling Body to which the application is made and shall contain the following:
- (i) The name and address and date of birth of each Member and the percentage share of each Member in the greyhound.
  - (ii) A statement setting out all financial arrangements agreed between the Members and, in particular, the method of calculating and the timing of payment of any contributions due from Members toward racing, training and other expenses and shall also be responsible for payment where applicable of each Members share of prize money and or bonuses won by a greyhound.
  - (iii) Provision for the appointment of a Manager in whom the legal possession of the greyhound is to be vested for the Syndicate.
  - (iv) A declaration that each member has read the GAR, including the rules therein concerning Syndicates and interests in greyhounds, and any Local Rules of the Controlling Body to which the application is made relating thereto, and that, except for traffic convictions involving a fine, had not been convicted of any criminal offence.
  - (v) A term imposing on the Manager an obligation to keep individual records of account for each greyhound.
  - (vi) Any provisions specified in R.5.
  - (vii) Any other provisions that the Controlling Body considers desirable either generally or in particular cases.
- (d) Application for renewal of a Syndicate shall be made prior to the time stipulated by the relevant Controlling Body from time to time, but not less frequently than bi-ennially.
- (e) The Controlling Body has complete discretion as to whether or not to:
- (i) register any Syndicate; and
  - (ii) suspend or remove a Syndicate from the register maintained by the Controlling Body.

#### **R.4 MANAGER**

- (a) If the owner of a greyhound is anything other than one (1) Natural Person, the owner must appoint a Natural Person as Manager.
- (b) Possession of the greyhound vests in the Manager.
- (c) The Manager shall, alone of the Partnership or Syndicate Members, be entitled to:
  - (i) nominate or withdraw a greyhound from an event;
  - (ii) nominate a greyhound for any series or bonus payment scheme;
  - (iii) receive any prize money or trophies won by a greyhound; and
  - (iv) act for and represent the Partnership, the Syndicate and the Syndicate Members in relation to the greyhound in all respects pursuant to the Rules.

- (d) The Manager of a Syndicate must:
  - (i) act honestly;
  - (ii) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Manager's position;
  - (iii) act in the best interests of the Members and, if there is a conflict between the Members' interests and the Manager's own interests, give priority to the Members' interests;
  - (iv) treat the Members who hold interests of the same class equally and Members who hold interests of different classes fairly; and
  - (v) carry out or comply with any other duty that is conferred on the Manager by the Syndicate Agreement.
- (e) The Manager may be removed or replaced by a memorandum signed by the Partnership or Syndicate Members comprising a majority interest of at least 51% in the greyhound.
- (f) The Manager must notify the Controlling Body in writing of any change in:
  - (i) the Manager (together with all details reasonably required by the Controlling Body); and
  - (ii) the composition or details of the Syndicate or Partnership,within seven (7) days of the change occurring or prior to the greyhound next racing, whichever is earlier.

## **R.5 SYNDICATE FINANCIAL MANAGEMENT AND REPORTING**

The Manager of a Public Syndicate must, and the Syndicate Agreement must contain terms that require the Manager to:

- (a) open and maintain a separate account with an Australian bank in respect of the Public Syndicate which account must be used for the deposit and payment of all moneys relating to the operation of the Syndicate;
- (b) keep such accounting records as a correct record to explain the transactions and financial position of the Public Syndicate, such records to be kept in such a way as will enable true and fair profit and loss accounts and a statement of assets and liabilities to be prepared in respect of the Public Syndicate from time to time;
- (c) in respect of each financial year for the duration of the Public Syndicate, prepare a true and fair profit and loss account and statement of assets and liabilities containing such information and matters as a correct record and explain the transactions and financial position of the Syndicate ("the Accounts") and:
  - (i) lodge the Accounts with the Controlling Body within 90 days after the end of that financial year;
  - (ii) deliver a copy of the Accounts to every participant in the Syndicate within 90 days after the end of that financial year;

- (iii) lodge with ASIC a copy of the Syndicate's most recent Accounts within 14 days after receipt of a written request to do so by ASIC; and
- (iv) by 31 March each year, give to Syndicate Members such written information that the Manager, acting reasonably, believes an ordinary Member needs in order to understand the Member's investment in the Syndicate including as a minimum, but not limited to, the provision for members being informed of their opening and closing balances, transactions during the year and the fees paid by investors during the year.

#### **R.6 SYNDICATE NAMES**

- (a) No Syndicate name shall be registered or used which has not been approved by the Controlling Body.
- (b) The Syndicate name shall remain the property of the Controlling Body in the jurisdiction that it has been registered, and is to be recorded on the National Data Records.

#### **R.7 CONTROLLING BODY MAY MAKE ADDITIONAL RULES**

The Controlling Body may from time to time make additional Rules making such provision in relation to owners of greyhounds (including Syndicates) as it may deem appropriate in relation to the formation, conduct and termination of any ownership structure, and otherwise howsoever in respect of them. Without limiting the generality of the foregoing, it may make Rules in respect of the following:

- (a) The information to be furnished to a Controlling Body in relation to the registration of a Syndicate.
- (b) The form of Certificate of Registration to be issued in respect of a Syndicate, the person to whom it is to be issued, and the person to have and retain the possession of the certificate.
- (c) The representation of a Syndicate for the purposes of the Rules.
- (d) The name in which a Syndicate may be registered and the powers of a Controlling Body to register or refuse to register or require the alteration of the name of a Syndicate.
- (e) The information to be furnished to a Controlling Body in relation to each additional greyhound to be entered or raced by a Syndicate.
- (f) The renewal or registration of a Syndicate.
- (g) The mode and circumstances of cancellation of registration of a Syndicate.
- (h) The service of notices upon or communications with a Syndicate and the members of it.
- (i) The termination of a Syndicate and matters relating thereto.
- (j) Procedures upon any change in membership of a Syndicate.
- (k) The fees to be paid in relation to a Syndicate.

#### **R. 8 COMPLIANCE WITH SYNDICATE RULES**

- (a) Every Member of a Syndicate shall in all respects and for all purposes be bound by these Rules irrespective of the nature or extent of the interests or rights of such Members in the Syndicate, and notwithstanding the provisions of any rules or constitution governing the Syndicate or any agreement or stipulation as between the Members of the Syndicate.

- (b) Every person (whether a Natural Person, a company or otherwise) who commits a breach of any of the Rules relating to Syndicates or who fails to comply with any of the requirements thereof may be penalised by the Controlling Body, who may also disqualify any greyhound owned or leased by the Syndicate.
- (c) Where any Member of a Syndicate is disqualified or declared to be a defaulter, no greyhound owned or part owned by that Syndicate is eligible to be nominated for a start in any event until such time as the Member is removed from the Syndicate.

## **R.9 REGISTRATION OF PROMOTERS**

- (a) Unless the person only conducts Personal Offers, a person must not offer for issue, or invite applications for the issue of, any interest in a greyhound (including by way of a Syndicate), or in any way conduct any activities of a Promoter, unless that person is first registered as a Promoter with the Controlling Body in the jurisdiction where the persons or person's business is located.
- (b) An application for registration as a Promoter must be accompanied with:
  - (i) the application fee prescribed by the Controlling Body;
  - (ii) the applicant's business plan, which must include (without limitation):
    - (A) details of the business's structure;
    - (B) details of how the Promoter will communicate with Members;
    - (C) details of how the Promoter will manage the accounts of a Syndicate and settle payments to Members.
  - (iii) a true copy of business and/or Company certificates of registration;
  - (iv) a statement of the applicant's assets and liabilities;
  - (v) National Police Certificate (NPC) Probity Check of discloseable court outcomes;
  - (vi) two written references by referees pertaining to the applicant's conduct of business.;
  - (vii) a copy of applicant's proposed form of Offer Document;
  - (viii) evidence of the Promoter's internal complaints handling procedure.
- (c) The Promoter must respond within 7 days to any written complaint in relation to the issue or sale of an interest in a Syndicate or conduct of a Syndicate under their management. This requirement is to ensure the Promoter acknowledges complaints, fairly considers them, records and reports them and advises of their appeal rights.
- (d) Should matters not be appropriately resolved by the parties, a statement advising that under the rules of racing they have a right to appeal to the respective Controlling Body where the Promoter is licensed.
- (e) The Controlling Body has complete discretion as to whether or not to:
  - (i) register any person as a Promoter; and
  - (ii) suspend or remove a Promoter from the register maintained by the Controlling Body.

- (f) Notwithstanding the generality of Rule R.14(d), the Controlling Body may suspend or cancel registration of a Promoter where the Promoter, or any member or officer of the Promoter:
- (i) breaches any of the Rules;
  - (ii) has been disqualified;
  - (iii) commits an act of insolvency; or
  - (iv) has appointed to them a receiver, manager, administrator, liquidator, trustee in bankruptcy or such other external controller.

## **R.10 OFFERS OF SYNDICATE INTERESTS**

### Promoters of Public Syndicates must be registered

- (a) A person must not:
- (i) make an offer of, or invite any application for, an interest in a Public Syndicate;
  - (ii) advertise Public Syndicate interests or publish any statement that is reasonably likely to induce people to acquire Public Syndicate interests; or
  - (iii) provide an Offeree for a Public Syndicate with an Offer Document,
- unless:
- (iv) that person is registered as a Promoter; and
  - (v) the Controlling Body has first provided written approval of the Offer Document.
- (b) Notwithstanding any approval given by a Controlling Body under R.10(a), such approval will not be regarded as the Controlling Body endorsing the Promoter or the Public Syndicate, and the Promoter must not represent, suggest or infer that any such approval amounts to the Controlling Body endorsing the Promoter or the Public Syndicate.

### Information to Controlling Body

- (c) The Promoter of a Public Syndicate must promptly provide the Controlling Body with a copy of :
- (i) any agreement establishing or affecting the Syndicate;
  - (ii) any agreement in relation to the Syndicate which any Syndicate participant is a party;
  - (iii) any information, including any Offer Document, in relation to the Syndicate that is provided by the Promoter to an Offeree; and
  - (iv) any advertisement in respect of the Syndicate.

### Offers

- (d) A Promoter of a Public Syndicate must not receive any payment (whether of money or other valuable consideration) from any person for an interest in, or to be a member of, a Syndicate unless the Promoter has first given the person an Offer Document.

- (e) A person must not offer interests in a Public Syndicate to an Offeree in the course of, or because of:
  - (i) an unsolicited meeting with the Offeree; or
  - (ii) an unsolicited telephone call to the Offeree
- (f) If the Promoter of a Public Syndicate will not be the Manager of that Syndicate, the Promoter must clearly state in the Offer Document that the Manager will be required to manage the Syndicate in accordance with the terms of any agreement governing the Syndicate approved by the Controlling Body and any rules, regulations or guidelines made by the Controlling Body in respect of such Manager or management.
- (g) Within seven (7) days of receiving a Member's money for the issue of an interest in the Syndicate, the Promoter must issue the Member with a receipt and a certificate confirming the Member's membership in the Syndicate and the nature of that membership.

Syndicate must be registered

- (h) Within 45 days of the Syndicate being fully subscribed, the Promoter must register the Syndicate with the Controlling Body.
- (i) Prior to registration of the Syndicate in accordance with R.3, the Promoter must ensure that the Public Syndicate has unencumbered title to the whole of the Syndicate's greyhounds.

Refunds

- (j) If the Syndicate is not fully subscribed within six (6) months after the date on which the Offer Document in respect of that Syndicate is approved by the Controlling Body, the Promoter must repay all money received from any person who applied to participate in the Syndicate, together with interest (if any) which accrued in respect of that money, within 10 business days after the expiry of that six month period.

**R.11 CONDUCT OF PROMOTERS**

The Promoter must:

- (a) provide any assistance or information reasonably required by the Controlling Body; and
- (b) for so long as the Syndicate is promoted by the Promoter, ensure that each Syndicate promoted by the Promoter is operated honestly, efficiently and fairly; and
- (c) provide any assistance or information reasonably required by the Australian Securities and Investments Commission in relation to any Syndicate promoted by the Promoter; and
- (d) maintain an internal complaints handling procedure approved by the Controlling Body, which includes as features:
  - (i) that the Promoter must respond materially and in substance within seven (7) days to any written complaint from a Syndicate Member in relation to the Syndicate; and
  - (ii) if the matter cannot be resolved by the parties, a statement advising Members that they have a right to appeal to the Controlling Body where the Promoter is licensed.

**R.12 INELIGIBLE MEMBER OR GREYHOUND**

- (a) The Controlling Body shall have the power to register any Syndicate or Partnership as the owner or lessee of a greyhound or any members thereof or a manager of a greyhound.
- (b) Unless otherwise directed by the Controlling Body, no Syndicate or Partnership shall be registered or continue to be registered whilst any greyhound owned by the Syndicate or Partnership is disqualified or whilst any member is a person whose interest in any greyhound would, under the Rules, operate to prohibit such greyhound from being entered for, or start in, any event.

**R.13 CHANGES TO SYNDICATES OR PARTNERSHIPS**

The registration of a Syndicate or Partnership will not be affected by the fact that:

- (a) a member of the Syndicate or Partnership, other than the Manager, has disposed of the whole or part of his or her interest since the Syndicate Agreement was registered, provided that no interest of any one such member is disposed of more than once in any period of 28 days and provided that notification of each such disposition signed by the transferor and the transferee and containing a declaration by the transferee that he or she possesses a copy of the Syndicate or Partnership agreement and that he has read the GAR and Regulations concerning Syndicates or Partnership and interests in greyhounds and any Local Rules of the Controlling Body by which the Syndicate or Partnership is registered relating thereto is lodged with the Controlling Body within seven days of the disposition;
- (b) a member of the Syndicate has died, provided that written notification of death is lodged with the Controlling Body within 28 days; and provided further that if the Controlling Body by notice sent to the registered address of the Syndicate calls for a new formal agreement to be lodged with the Controlling Body for approval, then at the expiration of 28 days after the date of the notice or such other period that the notice may prescribe the registration of the agreement previously lodged shall be cancelled; or
- (c) there has occurred any change of the directors or shareholders of a Company registered as a Syndicate or of the members of a Syndicate not being a Company, provided that notification thereof shall be made to the Controlling Body as required by these Rules.

**R.14 CANCELLATION OF A SYNDICATE OR PARTNERSHIP**

- (a) The registration of a Syndicate shall be cancelled by the Controlling Body if the Syndicate has so resolved by resolutions passed by members holding an interest of at least seventy-five percent.
- (b) The registration of a Partnership shall be cancelled by the Controlling Body if the Partnership has so resolved by resolutions passed by members holding an interest of at least fifty-one percent.
- (c) Notwithstanding anything in these rules, the Controlling Body may at anytime call upon the members of a Syndicate or Partnership to show cause why the registration of the Syndicate or Partnership should not be cancelled.
- (d) The registration of a Syndicate or Partnership may be cancelled by a Controlling Body upon written application by the Manager of the Syndicate if the Controlling Body is satisfied:
  - (i) that the Manager has given written notice, addressed to each member, at their last known contact address either email or physical; and
  - (ii) after the expiration of 28 days from such notice having been given, members holding an interest of not less than twenty-five percent in the Syndicate or Partnership have

given notice in writing to the Controlling Body notifying of their objection to the cancellation.

- (e) Notwithstanding the generality of Rule R.3(e), the Controlling Body may suspend or cancel registration of a Syndicate or Partnership where the Syndicate, Partnership or any member, Manager or officer thereof:
  - (i) breaches any of the Rules;
  - (ii) has been disqualified;
  - (iii) commits an act of insolvency;
  - (iv) has appointed to them a receiver, manager, administrator, liquidator, trustee in bankruptcy or such other external controller; or
  - (v) any Manager or officer fails to supply to the Controlling Body or its Stewards, within a stipulated time, such information as the Controlling Body (or the Stewards at the direction of the Controlling Body) may require.
- (f) In the event of cancellation of Syndicate or Partnership the primary responsibility for the welfare of any greyhound owned by the Syndicate or Partnership would be vested with the Syndicate or Partnership Manager.

#### **R.15 DISPUTE RESOLUTION**

Notwithstanding anything contained in these Rules, should a dispute arise between a Promoter and any Member of a Syndicate promoted by the Promoter concerning any matter relevant to a registered Syndicate, the Promoter and the Member shall submit to arbitration of that dispute by the Controlling Body or the Stewards thereof. The decision of the Controlling Body or the Stewards shall be final and binding on all parties affected by such dispute.

#### **R.16 RIGHT OF AUDIT**

In addition to any other power that the Controlling Body may have:

- (a) the Controlling Body may, whether by itself or by a person nominated by the Controlling Body, audit all books and records of any Syndicate; and
- (b) for a Syndicate (other than a Partnership), the Manager must do all things required by the Controlling Body, and provide all assistance required by the Controlling Body, for the purpose of the Controlling Body exercising its power under R.16(a); and
- (c) for a Partnership, each and every Member must do all things required by the Controlling Body, and provide all assistance required by the Controlling Body, for the purpose of the Controlling Body exercising its power under R.16(a).