



**Final Report on the Investigation of the
'Damien Oliver Inquiry' 2012 by Racing
Victoria Limited (RVL).**

13 June 2013

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GLOSSARY OF TERMINOLOGY

The Act	<i>Racing Act 1958</i>
AR	Australian Rules of Racing
The betting charge	The charge against Damien Oliver that he breached AR 83(c) by placing a bet of \$10,000 on Friday 1 October 2010 on ' <i>Miss Octopussy</i> ' to win Race 6 at Moonee Valley
Bricknell	Laurie Bricknell, racehorse owner and retired bookmaker
CEO	Chief Executive Officer
Freedman	Lee Freedman, licensed trainer of ' <i>Europa Point</i> '
GRV	Greyhound Racing Victoria
HRV	Harness Racing Victoria
Hunter	Mark Hunter, racehorse owner and form analyst
IP	Investigation Panel established by RVL to investigate the ' <i>Smoking Aces</i> ' allegation and later expanded to include the Oliver allegation
IR	Information Report
ISC	Integrity Sub Committee
LR	Local Rules made by Racing Victoria Ltd
The ' <i>Miss Octopussy</i> ' race	Race 6 at Moonee Valley on Friday 1 October 2010
Oliver	Damien Oliver, licensed jockey

The Oliver allegation	The allegation that Oliver placed a \$10,000 bet on ' <i>Miss Octopussy</i> ' to win in Race 6 at Moonee Valley on Friday 1 October 2010
The Oliver Inquiry	The RVL investigation into the Oliver IR
The Oliver IR	The IR which provided information alleging a bet was placed by Oliver on the horse ' <i>Miss Octopussy</i> ' in a race at Moonee Valley on Friday 1 October 2010
OM	Own Motion Inquiry by the Racing Integrity Commissioner into Race Fixing 2012
The phone charge	The charge against Oliver that he breached AR 160B(3) by having in his possession and using a mobile telephone in the jockeys' room at Moonee Valley Racecourse prior to Race 6 on Friday 1 October 2010
RADB	Racing Appeals and Disciplinary Board
RIC	Racing Integrity Commissioner
RVL	Racing Victoria Limited
Smerdon	Robert Smerdon, licensed trainer
The ' <i>Smoking Aces</i> ' allegation	The allegation pertaining to the fixing of the ' <i>Smoking Aces</i> ' race
The ' <i>Smoking Aces</i> ' Inquiry	The RVL investigation into the ' <i>Smoking Aces</i> ' allegation
The ' <i>Smoking Aces</i> ' race	The race won by ' <i>Smoking Aces</i> ' at Cranbourne, Victoria on 27 April 2011
Stand down	The suspension of a licence under the AR
VRI	Victorian Racing Industry

EXECUTIVE SUMMARY

Overview

This report outlines the result of my investigation into the handling of an inquiry (the Oliver Inquiry) conducted by Racing Victoria Limited (RVL), regarding an allegation of the placing of a \$10,000 bet by licensed jockey Damien Oliver (Oliver) on a rival horse at a Moonee Valley night thoroughbred race meeting in October 2010, in breach of the rules of racing.

My investigation was in response to requests by both RVL and the Minister for Racing to examine various aspects connected with the Oliver Inquiry.

RVL requested that I specifically review the powers provided to their stewards to investigate breaches of the rules of racing; make recommendations to clarify the rules regarding stewards' powers to 'stand down' (suspend) a licensed person before charges are laid; and make recommendations to any changes that would provide stewards with better access to information (including police information).

The Minister for Racing requested that I investigate the handling of the Oliver Inquiry to determine whether it had been conducted efficiently and expeditiously; the timing, including when RVL was provided with allegations, evidence and admissions; whether RVL acted appropriately with respect to its 'stand down' powers; and any other related matters I saw fit to examine.

My Role

The Racing Integrity Commissioner (RIC) position was established by way of amendments to the *Racing Act 1958* (the Act) to provide independent oversight of integrity matters across the three racing codes in this state – thoroughbred, harness and greyhounds – which constitute the Victorian Racing Industry (VRI).

I commenced as the inaugural RIC on 1 March 2010 with various powers under the Act, including those to investigate complaints, conduct audits and make recommendations. Included in my functions is that of investigating matters referred by the Minister or a controlling body. It is that function that relates to this matter.

Racing Victoria Ltd

RVL is the 'controlling body', or 'Principal Racing Authority', for thoroughbred racing in this state. It is a company incorporated under the *Corporations Act 2001* (Cth) and has responsibility under the Act for the regulation of thoroughbred racing, including the promulgation and enforcement of both the national and local (state) rules of racing.

Whilst RVL is not a statutory body, it is recognised by statute and performs a public regulatory role which includes the licensing of various racing industry roles, including jockeys.

No person may ride in a thoroughbred horse race as a jockey unless they hold a licence from RVL and any licensed jockey must comply with the rules of racing.

One such rule is Australian Rule of Racing (AR) AR83(c) which states that jockeys may be penalised if they bet on a thoroughbred race.

Another - AR 160B(3) - states that jockeys are not to have/use phones in the jockeys' rooms without permission of the stewards.

Both rules are relevant to this matter.

Background Events

In August 2012, I undertook an 'Own Motion Inquiry into Race Fixing' (OM) following extensive media coverage relating to allegations of race fixing in this State. As part of my inquiry, I canvassed information from both the general public and the racing industry, which would assist my examination of the potential existence of crime or corruption in racing in Victoria.

One race under investigation, by both Victoria Police and RVL, was a race at Cranbourne on 27 April 2011 won by a horse called '*Smoking Aces*' (the '*Smoking Aces*' race). In response to the allegation that the '*Smoking Aces*' race had been 'fixed' (the '*Smoking Aces*' allegation), RVL established an investigation panel (IP), comprising RVL stewards and a barrister to examine the '*Smoking Aces*' allegation.

Part of information received by my office was an Information Report (IR) which alleged that a bet had been placed by licensed jockey Damien Oliver on a horse '*Miss Octopussy*' in a race at Mooney Valley in October 2010 (Oliver IR). Initial review of the examination confirmed that '*Miss Octopussy*' had won Race 6 at a Moonee Valley night meeting on Friday 1 October 2010 (the '*Miss Octopussy*' race) and that Oliver had ridden another horse '*Europa Point*' in the same race.

Under my powers, I referred this information to both RVL and Victoria Police for investigation.

In response, RVL extended the delegation of the IP to also undertake an investigation of the Oliver IR (the Oliver Inquiry).

An investigation by the IP ensued, including a review of the '*Miss Octopussy*' race, analysis of betting activities and interviews of key persons of interest.

During the conduct of the Oliver Inquiry, widespread criticisms were made by the public and media regarding RVL's inaction, the protracted time taken to complete the Oliver Inquiry and the 'failure' to stand down Oliver, instead 'allowing' him to ride during the Spring Racing Carnival.

Oliver provided the IP with a signed admission on 12 November 2012, after the Spring Racing Carnival.

On 13 November 2012, Oliver was charged with two breaches of the rules of racing regarding a) placing a \$10,000 bet on Friday 1 October 2010 on '*Miss Octopussy*' to win the '*Miss Octopussy*' race (the betting charge) and b) having in his possession and using his mobile phone in the jockeys' room at Moonee Valley Racecourse prior to the '*Miss Octopussy*' race (the phone charge). Oliver was also stood down.

At a RVL Stewards' Inquiry hearing on 20 November 2012, Oliver pleaded guilty and was convicted of both charges. On the betting charge, he was disqualified from riding for eight months and additionally suspended from riding for a further two months. On the phone charge, he was suspended for one month but such period to be served concurrently with the penalty for the betting charge.

My Investigation

I commenced my investigation on 26 November 2012 following the completion of the stewards' inquiry and in response to the requests from RVL (14 November 2012) and the Minister for Racing (20 November 2012).

In addressing the issues identified for investigation by both RVL and the Minister, I adopted an 'end-to-end' examination of the Oliver Inquiry, examining all of the events and actions rather than selecting specific components.

To this end, interviews were conducted with the IP and the then RVL CEO; documentation and information examined and reviewed; legal advice sought regarding rules of racing, powers of stewards and other legal aspects such as the right to silence and 'without prejudice'; betting analysis conducted; telephone call records examined; and interviews/information sought from persons interviewed by RVL as part of the Oliver Inquiry.

My investigation proved to be difficult, protracted and frustrating, in the main due to two factors:

- (a) My lack of adequate powers. Whilst RVL past and present employees accepted my request to attend interviews, other key participants did not. These included Damien Oliver, Mark Hunter and Laurie Bricknell.

I have previously addressed this shortcoming in recommendations I made in the race fixing report (OM). The recommendation to extend my powers to include that of a Board of Inquiry was given in-principle support by the Minister for Racing.

- (b) Legal complications. There were a number of legal constraints on RVL in providing me with documentation and information on the basis that the information I requested was subject to either 'without prejudice' or legal professional privilege.

My frustrations were also compounded by time delays caused by the need for various parties to obtain and receive legal advice, to gather information from various sources and the difficulty in accessing persons during the

Christmas/New Year holiday period.

As a result of the lack of adequate powers and legal complications, my investigation and subsequent findings are based on limited information.

I completed my investigation in April 2013 and prepared an Interim Report of my investigations and findings to RVL and Victoria Police in early May 2013 inviting comment and response. Both organisations did so and their responses are included within this report.

I have considered both responses, and in particular RVL's, which in part, offers differing views to some of the aspects of my report. I have referred to those responses in this report where appropriate. I provide this final report, addressing all aspects of the RVL inquiry, in recognition of the high public interest shown in this matter.

Key Findings

1. Power of the stewards to suspend ('stand down')

The power to suspend (stand down) a licensed person is available to be exercised by stewards before any formal charges are laid, including during the course of an investigation and prior to its completion. However, the usage of the power unclear and requires urgent amendment.

One of the reasons for the lack of clarity is the existence of multiple rules of racing which create the power e.g. AR 8(e) which provides stewards a power to impose a 'penalty'; AR 193 which empowers stewards to suspend a licence in broad terms; and AR 8(l) which gives stewards the power to 'order down any rider'.

Another reason is the lack of specificity as to when the stewards can use those powers, and in particular, whether the power can be exercised before charges are laid or heard at a stewards' inquiry.

My analysis of these provisions is that AR 193 was available to the stewards to stand Oliver down. RVL's view is that while they generally agree, there was sufficient uncertainty and limitations in the operations of this particular rule.

Whilst not relevant to the Oliver Inquiry at the time, I commend RVL's introduction of a new rule of racing (LR 7C) which came into effect on March 7th 2013 which provides stewards with standing down powers after the laying of a 'serious offence' where the continued participation of that person in racing may pose an unacceptable risk to the image, interests or integrity of racing.

2. Usage of the power to stand down

Based on my review of the information available to RVL at the time, I have no concerns that Oliver was not stood down prior to 25 October 2012, the date Hunter was interviewed by the IP.

There were a number of occasions however when the IP could and should have exercised the power to stand Oliver down prior to 13 November 2012, the date he was stood down.

These include 25 October 2012 following the Hunter interview, 1 November 2012 following the Smerdon interview and 7 November 2012 following the Bricknell interview.

In my examination of the information, I am of the view that the decision taken not to do so until Oliver made admissions was too conservative and cautious in the circumstances. Such view is not shared by RVL.

3. Investigation Matters

No anomalies or betting activity of significance were identified or able to be linked to the Oliver Inquiry or the '*Miss Octopussy*' race.

In investigations of this nature, evidence of 'suspicious' riding or betting assists stewards in establishing potential breaches of rules. In the Oliver Inquiry, there was neither.

At the time of the Oliver Inquiry, RVL were aware that Victoria Police were conducting their own racing-related investigations, one of which was the '*Miss Octopussy*' race. In communications with Victoria Police, the IP were advised that the race was 'still relevant' to police but not clarifying whether Oliver was being treated as a 'witness', a 'suspect', a 'person of interest' or any other

commonly used term to describe persons involved in an investigation.

The IP drew the inference that Oliver's status was that of a person who may be interviewed as a suspect and therefore could claim a 'right to silence' as afforded to such persons (*s.464 Crimes Act 1958*), such right extending to any questions by the IP at a stewards' inquiry.

RVL supports the IP view as a sound and proper interpretation and entirely reasonable in the circumstances.

My view is that the information provided by Victoria Police to the IP namely, that the *Miss Octopussy* race was 'still relevant' was vague, at best.

The interpretation of the police information is a critical aspect of the IP's actions as it directly affected considerations as to whether to Oliver would answer questions at a stewards' inquiry, even if compelled by the rules of racing to do so.

My view is that the information provided by Victoria Police was misinterpreted by RVL, consequently affecting their decision not to bring Oliver before a stewards' inquiry.

In my examination of this aspect, Victoria Police have confirmed that the rights normally afforded under Section 464 of the *Crimes Act 1958* were not applicable in this instance.

The IP should have pressed Victoria Police for clarity in a critical aspect such as Oliver's status in the police investigation

The better exchange of information between Victoria Police and RVL would have clarified Oliver's status, if any, in the police investigation and, as a consequence, the IP's legal position, powers and options for actions.

Had the IP been advised that Oliver was not considered a 'suspect' in the police investigation, I expect they would have interviewed him and potentially stood him down, had he refused to answer any questions.

4. The Handling of the Oliver Inquiry

I find that the IP took a professional and methodical approach to investigating the '*Smoking Aces*' race and the '*Miss Octopussy*' race.

I have found no evidence that the IP conducted the Oliver Inquiry with interference from senior management or the RVL Board.

I have found no evidence to support the speculation that Oliver had an agreement with RVL that he could ride through the Spring Racing Carnival; receive a limited suspension so he could ride the following Spring; or not be subject to a fine.

I have found no evidence to support the concern that the IP's investigation was deliberately protracted.

Each of these findings are agreed to by RVL.

The IP did not access telephone records until late in their investigations. Oliver and Hunter's phone records would have assisted the Oliver Inquiry, as they would have provided early corroboration of Hunter's statement regarding the bet which was the subject of the Oliver allegation. These should have been obtained by the IP.

Possession of the powers of a Board of Inquiry during my investigation would have been of great value in order to test the information provided, glean additional information not provided and explore other details relevant to my investigation. The ability to compel documents and witnesses to assist me in an investigation of this nature would have been invaluable.

5. The RVL Penalty

I agree with RVL that the penalty imposed on Oliver by the stewards was reasonable in the circumstances.

I understand the public concerns that the penalty was 'light' and the perception that its leniency was as a result of an agreement between RVL and Oliver in exchange with Oliver making an admission of guilt. I have no evidence that

supports this.

I have examined the NSW matter of Blake Shinn and Peter Robl, also charged with betting offences, and offered as examples of the penalties that 'should' have been applied to Oliver. (*Shinn was disqualified for a total of 15 months and Robl for 12 months.*)

I find difficulties in making a comparison with the NSW cases due to the number and variance of charges, levels of cooperation by those charged and mitigating circumstances presented at the hearings. The nature, number, amount and frequency of bets placed by the NSW jockeys differ substantially to the Oliver case.

In taking into account all the variances, the Oliver penalty (eight months disqualification and two months suspension) does not appear disproportionate to those handed down to Shinn and Robl.

Recommendations

1(a) That RVL amend recently introduced LR 72C(1) to include provision for the stewards to stand down a person at any stage of their inquiries and investigations, not only after the laying of charge as is currently the situation, but also prior to (the laying of charges), if that person's continued participation in racing undermines the image, interests or integrity of racing.

I accept that RVL introduced this rule following both an extensive consideration of standing down issues and the receipt of legal advice but I am of the firm view that stewards must have the power to stand down a licensed person at any stage of their inquiries, with the proviso that the image, interest or integrity of racing may be affected not to do so.

1(b) That RVL repeal the recently introduced LR 72C(2), which provides that a decision of the directors shall prevail over the decision of the stewards to the extent of any inconsistency.

RVL, a 'Principal Racing Authority' under the rules of racing, already possesses an overall authority under AR 193 to suspend licences or to

disallow or remove suspensions of licences. As a consequence, should the stewards chose to exercise their powers under LR72C(1) and stand down a jockey, RVL can still override that decision.

The retention of LR 72C(2) as it stands now, creates the situation where RVL become involved in the decision making by stewards in regard to the exercise of their powers. This creates a lack of independence by stewards and the potential for perceived 'interference' or 'influence' by management, a major issue identified in my recent OM.

2. That the Minister urge the Chief Commissioner of Police to expedite the completion of the review of barrier(s) to the lawful and effective sharing of information between Victoria Police, my office and the racing controlling bodies.
3. That the Minister take all necessary steps to urge the Chief Commissioner of Police to either reconsider the establishment of dedicated, specialist investigators for sports related crime or corruption or to identify and nominate an existing investigative area of Victoria Police to be tasked with this role. *(Supported by RVL)*.
4. That the Minister seek to expedite my previous recommendation to amend the *Racing Act 1958* to confer the powers and privileges of a Board of Inquiry on the position of Racing Integrity Commissioner.

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BACKGROUND INFORMATION

The Racing Integrity Commissioner

1. The Racing Integrity Commissioner (RIC) was established under the *Racing Act 1958* (the Act)¹ (initially through the *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009*)² to provide independent oversight of integrity matters across the three racing codes – Thoroughbred, Harness and Greyhounds – which constitute the Victorian Racing Industry (VRI).
2. The RIC role was designed to address integrity related matters, which may include, but are not limited to:
 - (a) crime and corruption within the racing industry; and
 - (b) integrity processes and systems of the controlling bodies.
3. The position of the RIC has powers to conduct Own Motion Inquiries that do not relate to any specific complaint and to investigate matters referred by the Minister for Racing or a controlling body i.e. Racing Victoria Limited (RVL), Harness Racing Victoria (HRV) and Greyhound Racing Victoria (GRV).

Integrity In Racing

4. Victoria is recognised as a world leader in racing with the local industry contributing over \$2 billion to the economy annually and employing more than 70,000 people. The reputation and sustainability of the industry relies on public confidence in the integrity of the 'product'. For this reason, the three racing controlling bodies, RVL, HRV and GRV, have implemented a range of integrity systems and processes to ensure transparency, accountability and appropriate integrity assurance measures are in place. The integrity policies, processes and rules are designed to ensure that the reputation of the industry is safeguarded and that public confidence is

¹ *Racing Act 1958*. No. 6353 of 1958

² *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009*. No. 52 of 2009

maintained.

5. One such rule is *Australian Rules of Racing (AR)* Rule AR 83(c) regarding misconduct by a jockey or apprentice, which states:

Every jockey or apprentice may be penalised: (c) if he bet, or facilitates the making of, or has any interest in a bet on any race or contingency relating to thoroughbred racing, or if he be present in the betting ring during any race meeting.

6. Another integrity related rule regarding jockeys is AR 160B(3) which states:

No person shall, without the permission of the stewards: (3) within the area of the jockeys room bring into, have in his possession, or use any portable telephone, radio transmitter, radio transceiver or any other appliance, apparatus, instrument or equipment capable of receiving or transmitting information.

7. Both rules are relevant to this report.

The Racing Act 1958

8. My focus is to identify integrity related issues and take appropriate action(s). Upon receiving information or a complaint about an integrity related issue, I may elect to conduct my own investigation into the matter, refer the information provided (or part of the information) to another authorised agency to investigate the matter, conduct an own motion inquiry or take no further action.
9. My legislated functions are broad and include the conduct of annual audits of the internal integrity processes and systems, in whole or in part, of each controlling body; the conduct of audits outside the subject matter of the annual audit if a controlling body requests that such an audit be conducted; refer complaints to another authorised agency to investigate matters; conduct own motion inquiries that do not relate to any specific complaint and may include an investigation into systemic issues in racing; and investigate complaints made about the integrity processes and systems of a controlling body; and report findings of investigations.

10. The relevant legislation in my investigation is found at s.37B(1)(e) of the Act which provides that I have a function to:

...investigate matters referred by the Minister or a controlling body.

11. Also of relevance in my investigation is s. 37E(1) of the Act which empowers me to:

...disclose integrity related information to, as appropriate -

- (a) a controlling body including its integrity sub-committee and Stewards.

12. Section 3(1)(b) of the Act defines a '*controlling body*' as RVL for horse racing, HRV for harness racing and GRV for greyhound racing.

Overview of Key Events

13. On Monday 6 August 2012, *The Age* newspaper reported on allegations of race fixing under investigation by Victoria Police. The article reported that, during a police investigation into the homicide of former racehorse trainer, Les Samba (killed in Middle Park, Melbourne on 27 February 2011), detectives had uncovered evidence of suspected race fixing.³
14. The article reported that, as a consequence, a separate police investigation had commenced regarding a race won by '*Smoking Aces*' at Cranbourne, Victoria, on 27 April 2011 (the '*Smoking Aces*' race), which remains under investigation by Victoria Police.
15. That evening, the ABC's 'Four Corners' program expanded on *The Age* story addressing the issue of crime and corruption in racing.⁴
16. Following the initial media reports of 6 August 2012, public and media interest grew exponentially. In view of the public interest and further allegations regarding other races, I made the public announcement on 16

³ "*Police Probe racing corruption. Top jockeys investigated. The Smoking Aces Scandal.*" *The Age* newspaper, Melbourne. By Nick McKenzie, Clay Hitchens and Richard Baker. Page 1. Monday 6 August 2012.

⁴ ABC television. 'Four Corners'. "*Inside Mail*" reported by Nick McKenzie and presented by Kerry O'Brien, ABC1, Monday, 6 August 2012, 8.30pm

August 2012 to conduct an 'Own Motion Inquiry into Race Fixing'⁵ (OM) across the three racing codes and invited members of the general public and the racing industry to provide information.

17. The OM was conducted pursuant to my powers under s. 37B(1)(g) of the Act. A four week period was specified for the public to submit any information relevant to race fixing.
18. I also invited the three racing controlling bodies to make submissions to the OM.
19. My aim during the OM was specifically to identify whether race fixing was systemic in this state and generally to consider the broader issues which had been raised during the period of media attention.
20. On Friday 17 August 2012, in response to the allegations of race fixing generally and the 'Smoking Aces' race specifically, a RVL Integrity Sub Committee (ISC) held a meeting and recommended that an investigation panel be set up to inquire into the allegation pertaining to the fixing of the 'Smoking Aces' race (the 'Smoking Aces' allegation).
21. On Tuesday 21 August 2012, the RVL Board appointed an investigation panel (IP) under the AR 7(iii)(c) to investigate the 'Smoking Aces' allegation (the 'Smoking Aces' Inquiry). The IP established to this end comprised the Deputy Chairman of Stewards, Mr. Rob Montgomery, Stipendiary Steward Mr. James Hitchcock and Mr. Anthony (Tony) Burns, Barrister.
22. During the course of the OM, one Information Report (IR) was received by my office which, amongst a variety of information, made specific reference to an allegation of a bet being placed by licensed jockey Damien Oliver (Oliver) on the horse 'Miss Octopussy' in a race at Moonee Valley in October 2010 (the Oliver IR).

⁵ "2012 Own Motion Inquiry into Race Fixing". Wednesday 23 January 2013. Office of the Racing Integrity Commissioner, Melbourne.

23. The Oliver IR centred on information that Oliver had placed a \$10,000 bet on '*Miss Octopussy*', a rival horse to one he was riding, to win in a race at Moonee Valley on Friday 1 October 2010.
24. In accordance with my powers and functions, I reviewed the Oliver IR and decided the appropriate course of action was to refer the Oliver IR to both RVL and Victoria Police.
25. Initial inquiries by my office confirmed that '*Miss Octopussy*' had won Race 6 at Moonee Valley on Friday 1 October 2010 (the '*Miss Octopussy*' race) and that Oliver had ridden '*Europa Point*' in the same race, finishing sixth.
26. There are dates of relevance in my investigation which should be outlined (other key dates are listed later in this report at Attachment A).
27. On Friday 24 August 2012, the Oliver IR was referred to RVL. On Tuesday 28 August 2012, the Oliver IR was referred to Victoria Police and RVL.
28. On Thursday 30 August 2012, the RVL Board extended the IP's brief to investigate the allegation against Oliver following receipt of the Oliver IR (the Oliver Inquiry).
29. On Tuesday 16 October 2012, the IP wrote to Oliver directing him to attend a hearing on Thursday 18 October 2012 and answer questions regarding the allegation that he had placed a \$10,000 bet on '*Miss Octopussy*' to win in the '*Miss Octopussy*' race (the Oliver allegation). The RVL direction to attend included the advice that, pursuant to AR 175(f) and (p), failure to comply with the direction was an offence.
30. Oliver's legal representatives contacted the IP and stated that they were 'reluctant' to have Oliver attend due to his legal right to silence.
31. On Monday 22 October 2012, Oliver's legal representatives contacted the IP and requested a 'without prejudice' conference, which was held between Oliver, his legal representatives and the IP on that day. General Counsel for RVL also attended.

32. These discussions were held on an agreed 'without prejudice' basis and, accordingly, the IP maintained the confidentiality of the substance of those discussions.
33. In the meantime, the IP continued with the task of obtaining further evidence and, in this regard, a number of witnesses were interviewed on the following dates:
- (a) Mark Hunter (Hunter), racehorse owner and form analyst (Thursday 25 October 2012).
 - (b) Robert Smerdon (Smerdon), licensed trainer (Thursday 1 November 2012).
 - (c) Lee Freedman (Freedman), licensed trainer of '*Europa Point*' (Monday 5 November 2012).
 - (d) Laurie Bricknell (Bricknell), racehorse owner and retired bookmaker (Wednesday 7 November 2012).
34. On Tuesday 6 November 2012, the Minister for Racing issued a statement that RVL must be allowed to operate without government interference or involvement.⁶
35. On Monday 12 November 2012, an admission signed by Oliver was provided to the IP.
36. On Tuesday 13 November 2012, RVL Stewards charged Oliver with two breaches of the AR i.e.
- (a) AR 83(c) placing a bet of \$10,000 on Friday 1 October 2010 on '*Miss Octopussy*' to win the '*Miss Octopussy*' race (the betting charge); and
 - (b) AR 160B(3) having in his possession and using a mobile telephone in the jockeys' room at Moonee Valley Racecourse prior to the '*Miss Octopussy*' race (the phone charge).

⁶ Media Statement. "*Statement from the Minister for Racing*". Office of the Hon. Dr. Denis Napthine MLA. Tuesday 6 November 2012.

37. At that time i.e. Tuesday 13 November 2012, neither of these charges were defined as a “Serious Offence” under the AR. Since Friday 1 February 2013, however, AR 83(c) has been classified as a serious offence and as such can no longer be heard and determined by stewards but must be referred to the RVL Racing Appeal and Disciplinary Board (RADB).
38. Oliver’s licence was suspended (stood down) under AR 193 (RVL power to suspend) pending the hearing and determination of the charges.
39. On Tuesday 13 November 2012, the Minister for Racing expressed his concerns regarding integrity in racing and advised that the Government would not interfere with RVL’s investigation.⁷
40. On Tuesday 20 November 2012, a RVL Stewards’ Inquiry was held in regards to the betting charge and the phone charge, as a result of which, Oliver was found guilty on both charges. Oliver was disqualified from riding for a period of eight months, followed by a period of two months suspension of his licence to ride on the betting charge. On the phone charge, he was suspended for a period of one month, such suspension to be served concurrently with the penalty in the betting charge.
41. Both the handling of the investigation and penalties imposed as a result of the RVL investigation were widely criticised in the media and by the general public. Such criticisms included accusations that RVL had reached an agreement with Oliver to enable him to ride throughout the Spring Racing Carnival prior to any action being taken.⁸

Calls For Review

42. On Wednesday 14 November 2012, the then CEO of RVL formally wrote to me seeking a review of the Oliver Inquiry. I was specifically requested, with the approval of the Chairman of the ISC, that following the final

⁷ Media Statement. “*Statement from the Minister for Racing*”. Office of the Hon. Dr. Denis Napthine MLA. Tuesday 13 November 2012.

⁸ “*Minister froze when the heat turned up.*” The Australian newspaper, Melbourne. By Patrick Smith. Page 28. Wednesday 21 November 2012

Stewards' inquiry hearing and determination of the betting charge and the phone charge, I -

1. initiate a review of the powers provided to RVL Stewards to investigate breaches of the Rules of Racing,
 2. make recommendations to clarify the Rules of Racing (in particular, AR 193) in relation to the Stewards' power to stand down licensed persons before charges are laid; and
 3. make recommendations in relation to any change that could be made to provide Stewards with better access to information (including police information) in the course of investigations in order to better promote and protect the integrity of racing in this State.
43. On Tuesday 20 November 2012 the Minister for Racing wrote to me pursuant to s. 37B(1)(c) of the Act, seeking an investigation *"into the handling of the recently completed inquiry relating to licensed jockey Damien Oliver by Racing Victoria officials"*.
44. The Minister specifically sought responses to understand the following:
1. whether this inquiry was conducted as efficiently and expeditiously as possible;
 2. the timing of the inquiry, including when Racing Victoria was provided with any allegations, evidence and admissions,
 3. whether Racing Victoria acted appropriately with respect to its stand down powers; and,
 4. other related matters which I saw fit to examine.
45. The Minister's request was made public via a media release.⁹

My Investigation

46. This report outlines my investigation conducted pursuant to s. 37B (1)(e) of the Act into the conduct of an inquiry by RVL officials into the alleged betting by licensed jockey Oliver on the horse *'Miss Octopussy'* in Race 6 at Moonee Valley on Friday 1 October 2010, in which race he rode a horse named *'Europa Point'*.
47. On Wednesday 21 November 2012, I announced that I would conduct a

⁹ Media Statement. *"Minister seeks independent investigation of Damien Oliver inquiry"*. Office of the Hon. Dr. Denis Naphine MLA. Tuesday 20 November 2012.

review into the RVL inquiry into betting by jockey Oliver following requests from both the Minister for Racing and RVL.¹⁰

48. My investigation of the Oliver Inquiry was undertaken with the aim of addressing public concerns regarding the conduct and handling of the matter by RVL.
49. I had already held the view that questions regarding integrity in racing had been raised once again and required my involvement following the completion of the RVL Stewards' inquiry. My decision to investigate this matter was supported by the requests from RVL and the Minister to undertake a review.

¹⁰ Media Release. "*Commissioner announces review of handling of Damien Oliver matter.*" Office of the Racing Integrity Commissioner. Wednesday 21 November 2012.

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INVESTIGATION

50. To assist with putting the various events that occurred during this matter into context and perspective, it is useful to list each in chronological order. (See Attachment 'A')

51. An overview of the events, as they unfolded, was useful in the conduct of this investigation as much criticism was made regarding RVL's actions/inactions.

52. The overview also provides some clarity and explanation in understanding what information RVL had when it took the steps and made the decisions which are relevant in this investigation.

53. At the outset I should state that my investigation has proved to be difficult, protracted and frustrating.

54. There are two main reasons behind my statement:

(a) My lack of adequate powers.

Whilst current and former RVL employees accepted my request to attend interviews, other key participants in this matter have not. I do not have power to compel persons to appear or answer questions and, accordingly, have not had the opportunity to seek information or obtain documentation.

(b) Legal complications.

There were a number of legal constraints on RVL in existence which resulted in less than satisfactory provision of information to my office and, consequently, vital evidence not being available for review.

55. A number of pieces of key information and documentation from RVL were either not available or were provided in a heavily edited form.

56. For example, I requested Agendas and Minutes of RVL Board and ISC meetings between 1 August 2012 and 26 November 2012. Of the seven documents I received, six provided only 'relevant content' and in one case the entire document was withheld.
57. The consequence is that my investigation and subsequent findings are based on limited information.
58. I accept the RVL advice that, aside of documents regarding privileged legal communications and advice, and 'without prejudice' documents, only irrelevant parts of documents were redacted (e.g. those dealing with the general business of RVL or unrelated integrity matters). I also note that in response to my Interim Report, RVL has now invited me to inspect the un-redacted documents (other than those in which legal professional privilege is maintained and to which 'without prejudice' confidentiality attaches.) I did not take up this offer.
59. My frustration is that, whilst my report will answer some questions and concerns raised by the Minister, RVL and the general public, it will also leave a number of other questions unanswered.
60. The Minister has previously given in-principle support to the recommendations outlined in my OM report following its public release on Wednesday 23 January 2013. The implementation of a number of those recommendations will address many of the limitations I experienced during this investigation.

FINDINGS

Stewards' power to stand down and usage of 'standing down' provisions

61. Of key concern to RVL was the adequacy of the powers under the rules of racing for the stewards to 'stand down' Oliver in circumstances when he had not been charged with any offence.

The power of Stewards to stand down

62. Based on legal advice, my understanding of the stand down provisions in the AR, which applied at that time, is as follows:-

- (a) RVL stewards have a power under AR 8(e) to impose a 'penalty' for a contravention of the Rules, which includes the power to disqualify, suspend, reprimand or fine a person (AR 196).
- (b) Stewards also have a power under AR 193 to suspend any licence for such term as they think fit so far as it relates to the courses or meetings controlled by them. Such suspension may be disallowed or removed by RVL.
- (c) Stewards also have the power to 'order down a rider' for any reason (AR 8(l)) which, presumably, would include prior to the laying of any formal charges against a person.

63. The rules do not specify when stewards can exercise those powers and, in particular, whether the power can be exercised before charges are laid or heard at a stewards' inquiry hearing.

64. The power under AR 8(l) is available to address 'raceday' issues e.g. when a jockey is deemed unfit to ride due to medical issues and intoxication. There is a sense of immediacy attached to this power, as it includes the provision to substitute another rider. It may not be used as a form of punishment; hence, a rider is not 'stood down' or 'suspended', but 'ordered down'.

65. The power under AR 8(e) allows stewards to 'penalise' any person 'committing' a breach of the AR. Authorities with regulatory functions that include powers to penalise are assumed to have powers to take necessary interim measures to preserve the public interest. Such powers are implied by the nature of the regulatory functions.¹¹ It follows that the stewards, as the enforcement arm of racing, may have power under AR 8(e) to take interim action, such as suspending a licensed person while an investigation is conducted and before charges are laid or heard by a stewards' inquiry.
66. While RVL generally agree with my analysis of stand down provisions in AR193, they consider there was sufficient uncertainty and limitations in the operation of the rule. RVL disagrees that AR8(e) provided the stewards with an 'interim' power as my interpretation relies on "...a strained implication which lacks legal foundation" and any action by stewards under this rule would be "...successfully challenged".
67. I accept that the provisions of AR 8(e) are unclear and make no finding in that regard. My view remains however that the provisions of AR 193 are very broad in application and were available to the stewards. I note also that RVL, as the Principal Racing Authority, still maintained the power to disallow or remove a suspension under this rule.
68. I consider the power under AR 193 clearly allows the stewards to suspend a licensed person while an investigation is conducted and before charges are laid or heard by a stewards' inquiry. Such power was available to the IP in the Oliver Inquiry.

The Stewards' usage of the power to stand down

69. A key aspect regarding the stewards' powers to stand down Oliver was their consideration of whether to exercise their powers under either AR 8(e) or AR 193.
70. The power to stand down during an investigation is only available where it is necessary to preserve or safeguard some interest, whether public or private, that might otherwise be jeopardised if the intermediate suspension

¹¹ Forbes, *Justice in Tribunals* (2011, 3rd ed), 132ff.

is not imposed. An interim suspension should not be imposed in any punitive way, but only as a holding measure, pending further inquiries.

71. Determining whether a person ought to be suspended prior to any charges being laid requires an analysis of all of the circumstances of a case. Relevant factors to consider include: the nature, purpose and seriousness of the subject matter under investigation; the consequences of not suspending a person pending an investigation (e.g., whether they might be able to continue contravening the rules of racing whilst under investigation); public perceptions of propriety and integrity; the strength of the (prima facie) evidence against the person at the time of the purported suspension; and the consequences to the person if suspended (e.g. interference with their livelihood and reputation).
72. I consider that if stewards are to suspend a person during an investigation as an intermediate measure, they should only do so where sufficient and reliable evidence is available to justify the action. This is because the imposition of the suspension, even though not by way of punishment, interferes with rights that the person holds under his/her licence from RVL, to work as a jockey or other licensed person, and will affect his/her livelihood.
73. In the Oliver Inquiry, the critical aspect is whether the IP could have used the powers under AR 8(e) or AR 193, and if so, at what stage this should have occurred.
74. I note that RVL disagrees with my view, contending that the critical aspect was obtaining a successful prosecution and conviction; necessarily requiring sufficient and reliable evidence; and that the best evidence was a freely given admission of wrongdoing.
75. In my examination of this matter, whether Oliver was stood down or not is the crux of the matter. The public debate and concerns regarding the handling of the Oliver inquiry relate to RVL's inaction in standing him down. RVL clearly state that their focus was on obtaining a successful prosecution and conviction via an admission and that the stand down issue

was not the critical aspect.

76. My finding that RVL should have stood Oliver down remains.
77. The use of the stand down powers was a key aspect in addressing both the Minister's and the public's concerns that Oliver was 'allowed to ride', particularly given that he went on to ride in some 95 races in 16 race meetings between Tuesday 16 October 2012 (when he was first directed to attend the IP's investigation but declined) and Tuesday 13 November 2012 (when he was stood down).
78. As to the timing of the exercise of that power, an examination of all information indicates a number of occasions when RVL or the IP could have turned their minds to exercising their standing down powers.
- (a) Tuesday 28 August 2012 (on RVL's receipt of the Oliver IR from my office).
 - (b) Friday 31 August 2012 (when the IP's delegation to investigate the 'Smoking Aces' race was extended to include the Oliver allegation).
 - (c) Sunday 14 October 2012 (at which point the Oliver allegation became public when *The Age* ran a front page article on 'Damien Oliver's \$10,000 secret bet').¹²
 - (d) Tuesday 16 October 2012 (when Oliver declined to attend the IP's investigation).
 - (e) Monday 22 October 2012 (following 'without prejudice' discussions with Oliver's legal representatives).
 - (f) Thursday 25 October 2012 (following the interview of Hunter).
 - (g) Thursday 1 November 2012 (following the interview with Smerdon).
 - (h) Monday 5 November 2012 (following the interview with Freedman).
 - (i) Wednesday 9 November 2012 (following the interview with Bricknell).

¹² "Damien Oliver's \$10,000 secret bet". *The Sunday Age*. Melbourne. Page 1. Sunday 14 October 2012 by Nick McKenzie and Richard Baker.

(j) Monday 12 November 2012 (following the interview/admissions by Oliver

79. RVL disagree that there were various occasions, contending that there were insufficient circumstances to justify the consideration of exercising the standing down provisions.

80. Details included in the 'Age' article published on Sunday 14 October 2012 were that Oliver had bet on a rival horse, 'Miss Octopussy' in the same race he was riding 'Europa Point' on Friday 1 October 2010, using a 'middleman' to place his winning bet. Various parts of this story were repeated numerous times in the following weeks in media reports.

81. Based on my review of the information provided to me, I have no concerns that Oliver was not stood down on either of the first two dates in August. At that time, RVL and the IP were only in possession of three sentences of information and, in my view, whilst there was sufficient information to commence investigations, there was insufficient information to stand down Oliver or consider the laying of any charges.

82. The information known by the IP became public on the third date (Sunday 14 October 2012). At that stage the Oliver Inquiry was in progress, albeit in conjunction with the 'Smoking Aces' Inquiry. The IP had been active in their investigations having undertaken betting analysis, race reviews, sought legal advice and met with their Integrity Sub Committee (ISC) on various occasions.

83. Based on my review of the information available at the time, I am satisfied that the IP had insufficient evidence at that stage to take action against Oliver.

84. It appears that the IP had considered standing down Oliver but were concerned with the legal ramifications of doing so without sufficient evidence to sustain a charge.

85. The first and most compelling date for potential criticism is the fourth date (Tuesday 16 October 2012) when Oliver declined to attend the IP's

investigation. In 'ordinary' circumstances (i.e. where there is no criminal investigation taking place at the same time), this would be a key factor in deciding whether to stand a jockey down.

86. In this case, however, it appears there were two major factors in play.
87. Firstly, there was still no corroborating evidence of the bet, which was the subject of the Oliver allegation. Secondly, and most importantly, RVL's view of the advice they had received from Victoria Police was that the '*Miss Octopussy*' race was the subject of police investigations and had been described by Victoria Police as 'still relevant' to their inquiries.
88. The IP formed the view that a person involved in the police investigation would therefore have a right against self-incrimination and a right to silence and that this right applied both to the Victoria Police investigation and any inquiry conducted by RVL.
89. The RVL position, based on legal advice, was that, in these circumstances, Oliver would be entitled to refuse to answer the IP's questions even if compelled to attend and answer questions as provided by the AR. Two of the notable decisions known to the IP relevant to this 'right of silence' were the *Martins*¹³ and *Edelsten* cases.¹⁴
90. The Victoria Police response, in my examination of this issue, was that it appeared that the IP had inferred that Oliver was entitled to the rights afforded by Section 464 of the *Crimes Act 1958* (regarding persons in custody and including the 'right to silence'), which was not the case. The police added that the Purana Task Force could not be held responsible for decisions made by RVL in the circumstances outlined and any approach to Victoria Police in these circumstances should have been accompanied by a written request creating a formal process and accountability.
91. Without possession of corroborating evidence and with the understanding

¹³ De Castro Martins and ORS v Racing Penalties Appeal Tribunal of Western Australia and Anor – BC9705195. Supreme Court of Western Australia (WA) Kennedy, Wallwork and Steytler JJ, 20 August 1997, 10 October 1997. CIV 1190 of 1997.

¹⁴ Edelsten v Richmond and others Edelsten v Messiter. Court of Appeal: Hope, Priestly and Clarke JJA. 26, 27 October, 16 November 1987. NSWLR.

that Oliver was legally entitled not to answer questions, I consider that the judgment exercised by the IP not to stand him down to be reasonable in the circumstances.

92. The second most compelling date for potential criticism is Thursday 25 October 2012, following the interview with Hunter.
93. At this time, RVL was provided with what could be considered its first major piece of corroborative evidence of the bet with Hunter which was the subject of the Oliver allegation. Hunter confirmed receipt of the phone call from Oliver on the night of Friday 1 October 2010; receipt of the request from Oliver to place a \$10,000 bet on '*Miss Octopussy*' to win; placing the bet with Bricknell; and handing the winnings to Smerdon to pass on to Oliver.
94. These statements were tempered with Hunter stating that he could only remember the details 'to a degree' as he'd been drinking on Friday 1 October 2010.
95. The IP considered standing down Oliver following Hunter's statements. Whilst the IP had concerns with what they described as 'wishy-washy' evidence from Hunter, their main concerns were, that not only were they still 'vulnerable' to court or VCAT challenges by Oliver, which could overturn their actions, but also the potential subsequent public controversy that would follow if the standing down actions were overturned.
96. It also seems that playing on the minds of the IP was the potential of eventually obtaining a statement of admission from Oliver in due course and controversial actions, such as standing down, at this stage could jeopardise that outcome.
97. The IP also considered that, even if they stood Oliver down at this stage, it was likely that VCAT or the Supreme Court would stay the decision and allow Oliver to ride during the Spring Racing Carnival, so little would be achieved to do so at this point.
98. The IP's concerns regarding available corroborative evidence would have

been somewhat allayed if the IP had obtained telecommunication information or alternatively, sought telephone records from Hunter, which were not requested until Thursday 20 December 2012. Hunter's phone records later confirmed two calls from Hunter to Bricknell, 24 minutes and 7 minutes respectively, prior to the '*Miss Octopussy*' race and checks on Oliver's phone would have revealed calls to Hunter 27 minutes prior to the '*Miss Octopussy*' race and again 38 minutes after the start of the '*Miss Octopussy*' race.

99. I can understand the IP's concerns with the strength of the evidence and potential for having its decision overturned.

100. However, I do not agree with the IP's decision not to stand Oliver down. My view is that the IP adopted an overly-cautious approach and should have immediately stood Oliver down following the interview with Hunter on Thursday 25 October 2012.

101. I note that RVL disagrees, contending there were issues with relying solely on Hunter's evidence e.g. Hunter's admission he 'had plenty to drink', and had limited memory of parts of the night; and Hunter had provided evidence following an agreement he was to be treated as a witness and not a suspect.

102. I don't accept this view as whilst there were some concerns with Hunter's testimony, Hunter was not so disaffected by alcohol or memory lapses to be unable to recall the critical aspects.

103. At that stage the Oliver Inquiry was a matter of public scrutiny and major criticism was being leveled at RVL regarding 'deals' and 'self interest' in 'allowing' Oliver to ride through the Spring Racing Carnival.

104. While of course controlling bodies should not be dictated to by public opinion, the IP at that time was in possession of probative evidence corroborating the Oliver allegation. It was in the public interest for the IP to exercise its powers to stand Oliver down pending further investigation.

105. RVL contends the investigation had to be driven by the available evidence

which was to be obtained within "...a legal construct which recognises the rights of accused licensed persons" and it was inappropriate alter proper disciplinary or decision making processes "...solely to protect its image or that of its sport." The RVL view was that they had questionable strength of evidence, were acting on legal advice and to stand Oliver down would create potential jeopardy to a successful prosecution.

106. In my view, however, the public interest in preserving the integrity of racing outweighed the potential challenges and consequences of any action to stand Oliver down, including the consequences to Oliver personally. The Oliver allegation was serious and could have lead to charges for offences which are designed to protect and preserve the integrity of racing.

107. There was sufficient evidence for the stewards to take action in standing Oliver down.

108. The IP had the option of utilising AR 193, available when necessary to preserve or safeguard some interest, whether public or private, that might otherwise be jeopardised if the intermediate suspension is not imposed.

109. In this case, the expanse of media and public criticism and damage to the image of racing would have been reasonable grounds to form the basis for the exercise of this power.

110. A week later (Thursday 1 November 2012) Smerdon was interviewed by the IP and made statements that he received money from Hunter, in cash, to give to Oliver, and did so at his (Smerdon's) home some weeks later when Oliver was riding track work for him.

111. This interview provided corroboration to Hunter's statement and completed a transactional link from Oliver's placing of the bet with Hunter to receiving the winnings via Smerdon.

112. It's my view that standing Oliver down should have again been considered following the Smerdon interview. Any concerns about the strength of Hunter's evidence should now have been addressed by Smerdon's testimony. The power to stand down should have been exercised on

Thursday 1 November 2012.

113. I note RVL's disagreement with this view, contending that while Smerden corroborated Hunter's account to some extent, the absence of an admission from Oliver prevented charges being laid. Without that admission, RVL contend that standing Oliver down would 'no doubt' be overturned and lead to an admission not being provided by Oliver which would jeopardise the 'ultimate aim of the investigation'.
114. Whilst I understand the position taken by RVL and its support for the IP not to stand Oliver down, I do not agree. Key to my view is the recognition by the IP during interviews at my office that there was no 'guarantee' of an admission from Oliver. Admissions are not the sole proof of a breach. The testimony of two witnesses, supplemented by phone records to corroborate the circumstances, created a strong case.
115. My concern is that the IP's case was based on the pursuit of an admission, particularly when it was not 'guaranteed', rather than acting on the evidence they had before them.
116. In addition, I am concerned with RVL's response to my Interim Report, that had the IP taken a different approach (i.e. to stand Oliver down before gaining an admission), "...there is a significant likelihood that Damien Oliver would be still riding today."
117. The interview with Freedman on Monday 5 November 2012 did not raise any issues relevant to the stand down power.
118. I note that RVL disagrees, contending that the interview was of high relevance as it assisted the IP to determine whether they were investigating race fixing or jockey betting and until this time the investigation may have lead to more serious 'corruption-related' charges.
119. The interview with Bricknell on Wednesday 7 November 2012 completed the corroborative evidence available from witnesses in the Oliver Inquiry.
120. Again, I believe that there was sufficient justification for Oliver to have been

stood down following the Bricknell interview.

121. I note that RVL disagrees, contending that Bricknell's evidence was 'vague' and later contradictory to Hunter's evidence.

122. I find there were a number of occasions when the IP could have properly stood Oliver down from riding prior to the actual date that occurred (Tuesday 13 November 2012). In my examination of the information, I am of the view that the decision taken not to do so until Oliver made admissions was too conservative and cautious in the circumstances.

123. I hold this opinion in recognition that I make my finding in hindsight and with limited access to investigative material held by RVL and the IP. However, this is not merely a difference of opinion. The RVL view clearly indicates that the IP placed an emphasis on the potential ramifications of their decisions if challenged in VCAT or the Supreme Court, including the potential for scrutiny and criticism. I consider that emphasis disproportionate and it appears to me that the IP took an overly legalistic view rather than a pragmatic and responsive approach expected of a regulator accountable for ensuring public confidence in the integrity of racing.

124. I note the RVL contention that there was no proper legal and evidentiary basis to stand Oliver down; 'potentially serious ramifications' for the stewards to make a decision contrary to legal advice; and that my finding is 'unfortunately made in hindsight' and with the benefit of the IP having obtained the admission and guilty plea. I have considered this view but maintain my finding.

125. In regards to the effectiveness of stewards' powers to stand down in various circumstances, I commend RVL for taking the initiative to introduce a new rule of racing (Local Rule (LR) 72C) which came into effect on Thursday 7 March 2013 and provide the stewards with an express power to stand down a person once charged with a serious offence, if that person's continued participation undermines the sport's image, interests or integrity.

126. This measure, together with a number of other integrity-related initiatives¹⁵ clearly indicates RVL's preparedness to address areas requiring improvement and continue to strengthen their overall approach to integrity.
127. However, I have two concerns with the introduction of this new rule. Firstly, it does not clarify the power of the stewards before charges are laid as it only has application after a serious charge has been laid. It does not provide an express power for stewards to stand down a person prior to the charge i.e. at any stage of an investigation/inquiry.
128. The proposed new rule will not address circumstances similar to those in the Oliver Inquiry.
129. Secondly, the new rule includes a proviso in sub-section (2) that, to avoid doubt regarding a decision to suspend, "*...a decision of the directors shall prevail over the decision of the stewards to the extent of any inconsistency.*"
130. This is a major concern as it clearly introduces the potential involvement by the RVL Board, in the decision making process, in matters involving the stewards' power to stand down. It plays into the hands of the public perception in the Oliver Inquiry that the IP did not act independent of management influence and interference.
131. RVL currently has an important safeguard to the exercise of stewards' powers under AR 193, (to disallow or remove suspensions). This authority however, has traditionally been after the stewards' decision has been made. The new LR allows the Board of RVL to become involved in the decision-making process and make the decision whether to stand down. This authority would also extend to deciding to stand down where the stewards have decided *not* to stand down.
132. The new LR 72C (2) directly contradicts a key recommendation I made in the OM report on race fixing that stewards should be independent of the controlling body, a recommendation agreed to in principle by the Minister.

¹⁵ Media Release. "*Further Integrity Enhancements.*" Racing Victoria Ltd. Monday 8 April 2013.
Final Report on the Investigation of the 'Damien Oliver Inquiry' 2012 by Racing Victoria Limited (RVL)

Recommendation 1:

- (a) ***That RVL amend Local Rule 72C(1) to include provision for the stewards to stand down a person at any stage of their inquiries and investigations, including prior to and after the laying of charges, if that person's continued participation in racing undermines the image, interests or integrity of racing.*** (I note that RVL consider that this rule was implemented after extensive consideration and legal advice but maintain my recommendation that the rule requires amendment.)
- (b) ***That RVL repeal Local Rule 72C(2), which provides that a decision of the directors shall prevail over the decision of the stewards to the extent of any inconsistency.*** (I note that RVL advice that they may review this rule as part of considerations to other potential changes to existing integrity structures but maintain my recommendation that this part of the new rule should be repealed and in recognition that such amendment will not affect the power of RVL under AR 193 to have ultimate oversight of stewards' decisions to stand down).

Investigation Matters**(i) Betting Analysis**

133. All betting data provided by RVL to my office was initially examined and analysed by expert betting analysts at RVL.
134. No anomalies or betting activity of significance was identified or able to be linked to the Oliver Inquiry.
135. A secondary review of the betting data was conducted by my office with a similar outcome and the result that no betting anomalies could be identified in relation to the 'Miss Octopussy' race.

(ii) Victoria Police

136. Enquiries were conducted with Victoria Police to establish what, if any, investigations had been conducted or were active with respect to the 'Miss Octopussy' race and, more specifically, what, if any, investigations were

being conducted with regards to the Oliver allegation.

137. These inquiries were critical to understanding the IP's view of its powers and Oliver's right to silence.

138. Victoria Police confirmed that RVL was advised that, in addition to ongoing investigations into the *Smoking Aces* race, the '*Miss Octopussy*' race was 'still relevant' to Victoria Police.

139. Victoria Police advice to my office was that Oliver had not been approached for a statement or formally interviewed and that there was an 'investigative review'.

140. I am concerned about the lack of clarity and specific information in discussions between RVL and Victoria Police. Victoria Police described the '*Miss Octopussy*' race as 'still relevant'. I do not know what 'still relevant' means in this context.

141. Victoria Police did not confirm whether Oliver was being treated as a witness, a suspect, a 'person of interest' or any other commonly used terms to describe persons assisting with, or the subject of, police investigations. Victoria Police provided no other information regarding its investigation.

142. In my view the IP should have clarified Oliver's status in the police investigation. It appears that, following the Victoria Police discussions, the IP drew the inference that Oliver's status was not that of a 'witness' but rather that of a 'person who might be interviewed as a suspect at some stage', a critical judgment affecting the IP's decisions on whether it had the power to interview Oliver. The Victoria Police response did not answer the question of whether Oliver was a 'suspect' in their investigation. Victoria Police said that the '*Miss Octopussy*' race was 'still relevant' to its investigation and did not provide any information to clarify Oliver's status, if any, in the investigation.

143. RVL contends that "...the only reasonable interpretation that could be made from the written advice provided by a senior police officer was that Oliver

was the subject of an ongoing criminal investigation” and that my findings (regarding communications of Oliver’s ‘right to silence’) ”...are laboured and unsupported by the evidence.”

144. This aspect of my investigation has heightened my existing frustrations and concerns regarding the lack of exchange of information between Victoria Police, the controlling bodies and my office.
145. The lack of clarity in respect to Oliver’s status, if any, in the police investigation has resulted in RVL drawing the inference that Oliver was a potential ‘suspect’ and therefore accepting that he had a right to silence. The information on which this inference was based, namely, the Victoria Police response, was vague, at best.
146. I note the Victoria Police response that agrees with my finding that the decision made by RVL not to suspend Oliver was based on a perceived inference by RVL that Oliver had a ‘right to silence’ but that the rights provided for in the *Crimes Act 1958* regarding a ‘right to silence’ “....were not applicable in this instance”. .
147. A better exchange of information between Victoria Police and RVL would have clarified Oliver’s status, if any, in the police investigation and, as a consequence, the IP’s legal position, powers and options for actions.
148. I also note that the Victoria Police response advising that an approach to the police in these types of circumstances requires a written request which in turn “....creates a formal process and has accountability”. In this case initial verbal discussions initiated by the IP and the police were followed up by an email response by the police to RVL. My view is that an email response, such as that received by RVL, would constitute a formal response.
149. In my OM report I recommended that the Minister invite the Chief Commissioner of Police to review any barriers to information sharing. I’m pleased to recognise that this review has commenced but my investigation highlights the urgent need for this work to be completed so that law enforcement and racing integrity bodies can commence to work together.

Recommendation 2:

That the Minister urge the Chief Commissioner of Police to expedite the completion of the review of barrier(s) to the lawful and effective sharing of information between Victoria Police, the RIC and the racing controlling bodies.

150. I recognise the Victoria Police reluctance to establish a dedicated, specialist investigative unit comprising qualified detectives responsible for racing related crime and corruption as per another one of my recommendations in the OM report.

151. I maintain however, that there is a pressing need for suitably trained and specialist investigators to work with sporting bodies generally, not just in racing, on matters of crime and corruption. This expertise and establishment of close working relationships would have been of immeasurable benefit to both RVL and my office during the Oliver Inquiry and my subsequent investigation.

Recommendation 3:

That the Minister take all necessary steps to urge the Chief Commissioner of Police to either reconsider the establishment of dedicated, specialist investigators for sports related crime and corruption or to identify and nominate an existing investigative area of Victoria Police to be tasked with this role.

(iii) Other Interviews

152. Interviews and discussions by my office were conducted with stakeholders from various agencies and industry participants, including Victoria Police, wagering service providers, interstate racing authorities, media agencies, the general public, racing industry participants and racing officials. I also sought advice from the Victorian Government Solicitor's Office.

153. RVL officials directly involved in the Oliver Inquiry were interviewed in regards to the processes and actions of the IP, the RVL ISC and the RVL Board. These included each of the members of the IP and the then RVL

CEO.

154. Requests were made to Oliver, Hunter and Bricknell to participate in my investigation, all of whom declined to provide evidence or information to my office.

155. Throughout the conduct of my investigation, persons, both licensed and unlicensed, were identified as having the potential to provide information relevant to the review. All relevant persons of interest were contacted and requested to participate; however, I have no ability to direct individuals to attend an interview to answer questions.

156. These limits of my powers were expressed in my OM report and resulted in a recommendation that my powers be extended to include those of a Board of Inquiry.

157. To have had those powers during my investigation would have been of great value in order to test the information provided, glean additional information not provided and explore details relevant to my investigation.

Recommendation 4:

That the Minister seek to expedite my previous recommendation to amend the Racing Act 1958 to confer the powers and privileges of a Board of Inquiry on the position of Racing Integrity Commissioner.

Findings regarding the handling of the Oliver Inquiry

158. I find that RVL took a professional and methodical approach to investigating the 'Smoking Aces' race and the 'Miss Octopussy' race.

159. The establishment of an IP was carefully considered in recognition that the Executive General Manager Integrity and Chairman of Stewards were both unable to take part due to their unrelated legal obligations, which are known by this office, but not for public disclosure.

160. The IP members were chosen based on their legal and racing experience and knowledge and were provided support as required.

161. While there are assertions to the contrary, I have found no evidence that the IP conducted the Oliver Inquiry with interference from senior management or the RVL Board.
162. I accept the IP's view that initially they had no evidence to support charges against Oliver and were faced with the situation of conducting an interview where he would claim his right to silence.
163. I find that the Victoria Police advice regarding Oliver's status, if any, in the police investigation was, at best, vague and that the IP inferred from this advice that Oliver was a 'person who might be interviewed as a suspect at some stage'. I find that, had the IP been advised that Oliver was neither a suspect nor subject of a police investigation, it would have interviewed him and potentially stood him down, had he refused to answer any questions.
164. I accept the IP's contention that it was reasonable to assume that, in due course, Oliver would have made a statement to the IP.
165. My view remains however that Oliver should have been stood down on Thursday 25 October 2012 and that the IP should not have waited until the provision of Oliver's statement on Monday 12 November 2012.
166. I have found no evidence to support the speculation that Oliver had an agreement with RVL that he could ride through the Spring Racing Carnival; receive a limited suspension so he could ride the following Spring; or not be subject to a fine.
167. I have found no evidence to support the concerns that the IP's investigation was deliberately protracted. I note that the '*Smoking Aces*' Inquiry by RVL necessitated over 30 interviews, race reviews and betting analysis and required prioritisation.
168. I note that, whilst the IP was tasked with investigating the '*Miss Octopussy*' race on Friday 31 August 2012, the investigation did not commence until a number of weeks later and concluded with charges being laid on Tuesday 12 November 2012.

169. I also note the legal and procedural issues raised by RVL. As I have limited access to investigation notes and diaries, I am unable to comment on the aspect of delays any further.

170. I note that no telephone records were obtained from Oliver or Hunter during the early stages of the IP investigation and the IP's comments that, whilst this information would have corroborated the alleged calls occurring, the actual content of those calls could not be obtained.

171. I do not accept, however, that having these records would not have assisted the Oliver Inquiry, as they would have provided early corroboration of Hunter's statement regarding the bet which was the subject of the Oliver allegation.

172. I note RVL's concerns that my 'no evidence' type findings regarding the handling of the investigation do not adequately reflect the evidence provided to me by the IP. I make such findings however on all the available information at my disposal, not only testimony from the IP.

The RVL Penalty

173. The IP and RVL deny the allegation that Oliver was given a lenient sentence following an agreement with RVL.

174. I acknowledge that, in spite of the penalty being considered by RVL as 'severe' for the betting charge and the phone charge, public perception was that it was 'light'.

175. I understand the public concern about the penalty. However, I find that it was reasonable in the circumstances.

176. The penalties imposed on Oliver have been the subject of comparison with the NSW matter of Blake Shinn and Peter Robl.¹⁶ Blake Shinn was disqualified for a total of 12 months for placing bets and fined \$2,900. On the charge of using a phone in the jockeys' room to place a bet, he was

¹⁶ Racing New South Wales. Appeal Panel transcripts. 24 February 2011. In the Matter of the Appeal of Licensed Jockey Peter Robl. J.Hiatt OAM, J Fletcher, J Hickman. And Appeals of Licensed Jockey Blake Shinn and Licensed Stable hand Carol Shinn.

further disqualified for three months. His penalties were made cumulative i.e. a total of 15 months. Peter Robl was disqualified for six months for placing bets and a further six months for giving false and misleading evidence at a stewards' inquiry. His penalties were cumulative.

177. My own view is there are difficulties in comparing the Shinn and Robl matters with penalty imposed on Oliver, due to the number and variance of charges, the level of co-operation of the individuals charged and the differing mitigating circumstances presented by all parties during their respective pleas.
178. For example, Peter Robl did not bet on any horses other than his own, Blake Shinn placed one bet on a rival horse; Blake Shinn and Peter Robl placed bets over two years and exceeding \$500,000; Blake Shinn and Peter Robl placed 'hundreds' of bets on races in which they did not ride; and Peter Robl gave false and misleading evidence.
179. In comparing the penalties, the penalties imposed on Oliver (eight months disqualification plus two months suspension on the betting charge and one month suspension on the phone charge, to be imposed concurrently) do not appear disproportionate to those handed down to Blake Shinn and Peter Robl.

CONCLUSIONS

180. The refusal of Oliver, Hunter and Bricknell to participate in my investigation prevented a full investigation of the Oliver Inquiry being conducted.
181. The transcripts of the interviews conducted with Hunter, Bricknell, Smerdon and Freedman by the IP were reviewed; however, no independent information from these parties was made available to my investigation by way of interview.
182. The additional impediment of privileged information being restricted from release to me has severely limited my ability to undertake a thorough and comprehensive investigation of all the facts. Any correspondence or documentation relating to 'without prejudice' discussions was withheld.
183. Minutes of RVL Board and ISC meetings requested by and provided to me were heavily masked and were of minimal value
184. RVL were without the benefit of the use of the two most senior members of the integrity department in the Oliver Inquiry due to unrelated legal obligations.
185. There was a lack of clarity from Victoria Police in regards to Oliver's status, if any, in police investigations, which resulted in the IP misinterpreting the police advice, and as a consequence, affecting the IP's judgement on whether to compel Oliver to attend a stewards' inquiry hearing.
186. There was a lack of overall collaboration between Victoria Police and RVL.
187. The stewards' powers to stand down prior to charges being laid or determined at a stewards' inquiry, whilst in my view available, were unclear and created doubts in the mind of the IP and require urgent amendment. There is a need to amend new stand down provisions to include application to circumstances involving investigations into serious offences at any stage prior to or after a charge being laid or determined after a stewards' inquiry.
188. I have no evidence to support the speculation that the Oliver Inquiry was handled unprofessionally, incompetently, inefficiently or in a protracted

manner.

189. I have no evidence to support the speculation that RVL influenced or interfered with the Oliver Inquiry by the IP.

190. My view is that the IP adopted a cautious and methodical approach to the Oliver Inquiry. It's totally understandable that the IP had to seriously consider the issues of Oliver's 'right to silence', limited evidence and 'without prejudice' discussions. However, the IP placed an over-emphasis on both the potential ramifications of using the stand down powers at an early stage and also the criticality of obtaining an admission from Oliver, which, by default, resulted in the progress and pace of the Oliver Inquiry not being determined by the IP.

191. The nature and circumstances of the Oliver Inquiry, amid public outcry regarding integrity in racing and against the backdrop of the highest profile race meeting in the country, necessitated early and decisive action.

192. The eventual outcome of any challenges to the actions of the IP should have been a secondary consideration. The stand down provisions should have been exercised regardless of potential challenges and done so in the knowledge that not to exercise them would create widespread public concerns.

193. Implementation of the recommendations in this report, particularly those regarding changes to the stand down powers and improved information exchange and cooperation with Victoria Police, will go a long way to ensuring these issues are addressed in future.

ATTACHMENT A

Chronology of Events/Investigation

1. **Friday 1 October 2010:** Oliver rides '*Europa Point*' (second favourite – starting price \$3.80) in the '*Miss Octopussy*' race. Prior to the race, Oliver calls Hunter from the jockeys' room at the Moonee Valley racecourse for a \$10,000.00 bet to be placed on a rival horse '*Miss Octopussy*' (race favourite – starting price \$2.30) in that race. Hunter subsequently contacts Bricknell who accepts the bet as requested. *Miss Octopussy* was declared the winner of the '*Miss Octopussy*' race with *Europa Point* placed sixth.
2. A post-race review was conducted by RVL Stewards on duty at the meeting and no anomalies were identified regarding the riding of the '*Miss Octopussy*' race.
3. Later inquiries by this office confirm a telephone call by Oliver from his RVL approved mobile phone to Hunter at 8.48pm; a call from Hunter to Bricknell at 8.51pm; a second call from Hunter to Bricknell at 9.08pm; and a second call from Oliver to Hunter at 9.53pm.
4. **Monday 6 August 2012:** *The Age* newspaper reports on allegations of corruption and race fixing in the VRI and a Victoria Police investigation regarding the '*Smoking Aces*' race. That evening, the ABC's 'Four Corners' program expands on *The Age* story addressing the issue of crime and corruption in racing.
5. **Friday 10 August 2012:** My office receives the Oliver IR.
6. **Thursday 16 August 2012:** I make a public announcement that I would conduct an OM into race fixing.
7. **Friday 17 August 2012:** The RVL ISC holds a meeting and recommends the IP be set up to conduct the '*Smoking Aces*' Inquiry and report its findings to the RVL Board.

8. **Tuesday 21 August 2012:** The RVL Board approves the ISC resolution of 17 August 2012 and appoints an IP consisting of Mr. Rob Montgomery (Deputy Chairman of Stewards), Mr. James Hitchcock (Stipendiary Steward) and Mr. Anthony (Tony) Burns (Barrister).
9. Due to unrelated legal obligations, which are known by this office, but not for public disclosure, RVL Executive General Manager – Integrity Services, Dayle Brown and Chairman of Stewards, Terry Bailey, are unable to participate in the ‘*Smoking Aces*’ Inquiry.
10. **Friday 24 August 2012:** Following an initial review and assessment of information, my office disseminates the Oliver IR to RVL.
11. **Tuesday 28 August 2012:** Following an initial review and assessment of information, my office disseminates IRs to RVL and Victoria Police regarding a number of integrity related matters and including the Oliver IR.
12. **Thursday 30 August 2012:** The RVL Board meets and extends their delegation of powers to the IP to also include the Oliver IR.
13. **Friday 31 August 2012:** The IP is advised of the extension of delegation to also investigate the Oliver IR.
14. **Thursday 6 September 2012:** The IP commences betting review of the ‘*Miss Octopussy*’ race.
15. **Thursday 4 October 2012:** The RVL Board meets. One of the agenda items is an overview of the ‘race fixing investigations and related inquiries’. The Board notes that the Oliver Inquiry had not yet commenced, ‘...due to factors such as availability of witnesses’. Discussions are conducted regarding external legal advice received by RVL on the refusal of licensed persons to give evidence on grounds of self-incrimination.
16. **Sunday 14 October 2012:** The Oliver allegation is published in ‘*The Age*’ newspaper. Subsequent media articles report that racehorse owners start removing Oliver from previously booked racing rides.

17. That same day a RVL Media Release confirms that the '*Miss Octopussy*' race was subject of a stewards' investigation and the '*Smoking Aces*' race was under police investigation.
18. Media reports regarding Oliver continue on a daily basis.
19. **Tuesday 16 October 2012:** The IP writes to Oliver directing him to attend a hearing on Thursday 18 October 2012 and answer questions regarding the Oliver allegation, adding that a failure to comply with the direction is an offence under AR 175(f) and (p).
20. That same day legal representatives for Oliver contacts the IP and states that they are 'reluctant' to have Oliver attend due to his legal right to silence. The legal representative requests that the IP talk to the Purana Taskforce and ascertain whether there is an investigation involving Oliver.
21. The IP makes inquiries and receives written advice from Victoria Police that states that the '*Miss Octopussy*' race was 'still relevant' to Victoria Police.
22. On the same date, the IP writes to Hunter directing his attendance at an investigation on Monday 22 October 2012 regarding the '*Miss Octopussy*' race.
23. **Wednesday 17 October 2012:** Schweppes Thousand Guineas (Caulfield).
24. **Saturday 20 October 2012:** BMW Caulfield Cup
25. **Monday 22 October 2012:** Oliver and his legal representatives attend a 'without prejudice' discussion with the IP.
26. **Thursday 25 October 2012:** The IP interviews Hunter.
27. Hunter states that he received a phone call from Oliver, who asked him (Hunter) to place a \$10,000 bet on *Miss Octopussy* in the '*Miss Octopussy*' race.

28. Hunter recalls receiving the bet approximately 20 minutes before the 'Miss Octopussy' race, scheduled at 9pm; being aware that Oliver was riding that night; and knowing that Oliver was not permitted to bet or have a phone in the jockeys' room.
29. Hunter confirms that he placed the bet via Bricknell, a Queensland based ex bookmaker and friend.
30. Hunter states that he later handed the winnings of the bet to licensed trainer Smerdon, to pass on to Oliver. (*The exact date of that transaction has not been determined*).
31. **Friday 26 October 2012:** Sportingbet Manikato Stakes, Moonee Valley.
32. **Saturday 27 October 2012:** Sportingbet Cox Plate, Moonee Valley.
33. **Thursday 1 November 2012:** The IP interviews licensed trainer Smerdon, who confirms that he was handed a sum of cash by Hunter to give to Oliver, which he did.
34. **Saturday 3 November 2012:** AAMI Victoria Derby, Flemington.
35. **Monday 5 November 2012:** The IP interviews licensed trainer Freedman, trainer of 'Europa Point', which was ridden by Oliver in the 'Miss Octopussy' race. Freedman confirms that he had no concerns with the ride or the race.
36. **Tuesday 6 November 2012:** Emirates Melbourne Cup, Flemington.
37. Media commentary and criticism continues regarding Oliver being 'allowed to ride'.
38. Melbourne newspapers give prominence to the Oliver Inquiry on Cup Day. *The Age*, page 1, carries an article "Exclusive. Cup favourite jockey Damien Oliver admits to betting scandal. Why is he still in the saddle?" and the *Herald Sun* run an article on page 3, "Racing Stewards grill Damien Oliver over \$10,000 bet claim. Top jockey quizzed".

39. **Wednesday 7 November 2012:** The IP interviews Bricknell.
40. **Thursday 8 November 2012:** Crown Oaks, Flemington.
41. **Saturday 10 November 2012:** Emirates Stakes, Flemington.
42. **Monday 12 November 2012:** Oliver provides the IP with a signed statement in which he makes admissions regarding the Oliver allegation. These include: -
 - (a) ringing Hunter during the night to place a \$10,000 bet on '*Miss Octopussy*' in the '*Miss Octopussy*' race;
 - (b) placing the bet on credit;
 - (c) ringing Hunter from his mobile phone in the jockeys' room; and
 - (d) receiving his winnings, approximately \$11,000 from Smerdon, in cash, 'some weeks later'.
43. **Tuesday 13 November 2012:** Oliver is charged with the betting charge and the phone charge. He is stood down from riding by the IP. RVL issues a Media Release regarding the charges and standing down of Oliver advising a stewards' inquiry would be held on Tuesday 20 November 2012.
44. On the same date, the IP writes to Bricknell requesting consent to obtain betting records.
45. Also on the same date, the Minister for Racing issues a media statement expressing concerns regarding the integrity of racing and stating that individuals should be afforded procedural fairness and natural justice and would ensure there was no interference from government.
46. **Wednesday 14 November 2012:** The then CEO of RVL requests a review of the Oliver matter by me on conclusion of the stewards' inquiry hearing (scheduled for 20 November 2012) and subsequent determination of charges. The request specifically asks for a review of the powers of stewards to investigate breaches and recommendations to clarify the standing down powers and access of stewards to information, including police information.

47. **Monday 19 November 2012:** The RVL Board meets. It notes both the verbal update on the status of the Oliver Inquiry and also the CEO's letter dated 14 November 2012 requesting a review by me regarding stewards' powers.
48. **Tuesday 20 November 2012:** RVL Stewards' Inquiry hearing conducted at which Oliver pleads guilty. The hearing panel comprised Mr. Rob Montgomery as Chairman with Mr. James Hitchcock and Mr. Brett Wright (Regional Steward) as panel members, together with Mr. Tony Burns as Counsel Assisting the inquiry.
49. On the betting charge, Oliver is disqualified from riding for eight months and suspended from riding for a further two months. On the mobile phone charge, he is suspended for one month but to be served concurrently with the previous penalty. The commencement date for the penalties to take effect was set for Tuesday 13 November 2012, the date on which he was stood down.
50. On the same date, the Minister for Racing requests me to conduct an examination into the handling of the Oliver Inquiry. The Minister requests to be advised as to whether the Oliver Inquiry was conducted efficiently and expeditiously; timing regarding allegations, evidence and admissions; stand down powers; and any related matters I see fit to examine.
51. Also on the same date, the then RVL Chairman, Michael Duffy, makes a statement via Media Release advising that the stewards' inquiry into the betting charge and the phone charge was complete and setting out the key facts in the matter.
52. Oliver also released a Media Statement on that date.
53. **Wednesday 21 November 2012:** Bricknell writes to the IP in response to the allegation that he placed the bet which was the subject of the Oliver allegation on behalf of Hunter and advises that there is no evidence to support the allegation.

54. **Sunday 25 November 2012:** Bricknell holds discussions with the IP for a second time.
55. **Monday 26 November 2012:** I commence my investigation into the Oliver Inquiry, following the expiration of the period to lodge an appeal.
56. On that date I write to RVL requesting information to assist with my review. This includes a request for investigation files; Board and ISC Agendas and Minutes; records and notes of meetings and communication with Oliver; betting records and analysis; phone records; and any other information relevant to the inquiry.
57. On the same date, Bricknell signs a consent to release betting records to the IP.
58. **Wednesday 28 November 2012:** The IP provides a final report on the Oliver Inquiry to the RVL Board and advises that investigations regarding Hunter and Smerdon are continuing.
59. **Thursday 20 December 2012:** Smerdon is charged by RVL for a breach of AR175A (conduct prejudicial to the image, interests or welfare of racing) to be heard by the RADB on a date to be determined.
60. On the same date, IP sends a request to Hunter to produce mobile phone records.
61. **Friday 21 December 2012:** RVL responds to my initial request for information. The response indicates my request for investigative files and papers can not be acceded to in full as advice from Oliver's legal representatives to RVL was that there was no consent by Oliver to release certain documentation arising from 'without prejudice' communications with the IP.
62. I am provided with a copy of the IP's report to the RVL Board, dated 28 November 2012, such copy 'masking' information contained in four of the 22 paragraphs of the report.

63. I am not provided with:

- (a) medical records (which had been submitted to the IP);
- (b) signed statement by Oliver dated 9 November 2012;
- (c) records and notes (formal and informal) of meetings and communication with Oliver and/or his legal representatives on the basis that the communications were conducted on a 'without prejudice' basis.

64. I am provided with:

- (a) Agendas and Minutes of ISC meetings since August 2012 (with the exception of sections identified as confidential material withheld due to 'legal professional privilege');
- (b) Oliver's licensing details and summary of riding and offence history;
- (c) Betting records and analysis obtained/conducted by RVL regarding the '*Miss Octopussy*' race;
- (d) A chronology of the events prepared by the IP;
- (e) Statement issued by the RVL Chairman on Tuesday 20 November 2012 following the completion of the Oliver Inquiry; and
- (f) Copy of Oliver's media statement on the same day.

65. **Thursday 27 December 2012:** A request is made by my office to Victoria Police regarding police interest in the '*Miss Octopussy*' race.

66. **Wednesday 2 January 2013:** I write to RVL seeking additional information following my examination of the material provided in response to my first request. The second request seeks a variety of documents including ISC meetings/records; terms of reference and instructions provided to the IP; copies of telephone records; documents provided by wagering service providers; records of communication or notes regarding meetings with Victoria Police; and investigation/legal notes/advice.

67. **Friday 11 January 2013:** Hunter provides the IP with a copy of his phone records as requested, which confirm Hunter's call to Bricknell on Friday 1 October 2010.
68. On the same day I write to Oliver, Bricknell and Hunter seeking to arrange appointments to meet with each.
69. **Tuesday 15 January 2013:** RVL responds to my additional request, providing much of the material/information requested apart from notes, diary entries, memos and case file notes of the investigation '*....due to the 'without prejudice' basis on which it is derived or which is otherwise subject to legal privilege*'.
70. On the same date, a further request is sent by my office to Victoria Police seeking additional information to my earlier request of Thursday 27 December 2012 in regards to the status of police investigations.
71. **Friday 18 January 2013:** RVL releases a Media Bulletin advising that the IP will take no further action against Hunter and Bricknell with regards to the Oliver Inquiry. The release states that the IP has exercised its discretion not to charge Hunter '*...as a result of assistance and information provided...*' by Hunter regarding the Oliver allegation during the investigative stage.
72. On the same day I receive written advice from Victoria Police that Oliver had not been approached for a statement or formally interviewed and that there was an 'investigative review' and that Victoria Police had advised RVL that the '*Miss Octopussy*' race was 'still relevant' to Victoria Police.
73. **Monday 11 February 2013:** I write to RVL with a third request for additional information and documentation. Copies of telephone records and correspondence between RVL and persons requested to attend the IP are requested.
74. **Thursday 7 February 2013:** Smerdon appears before the RVL RADB to answer a charge of breaching AR 175A (conduct prejudicial to the image, interest or welfare of racing), to which he pleads not guilty.

75. **Wednesday 13 February 2013:** RVL RADB finds Smerdon guilty of a breach of AR175A (conduct prejudicial to the image, interests or welfare of racing) and fines him a total of \$10,000.00, payable on or before Thursday 21 March 2013.
76. **Thursday 28 February 2013:** RVL forwards the third tranche of information as requested by my office.
77. **Thursday 7 March 2013:** Interviews are conducted in my office with the members of the IP (Mr. Robert Cram, Mr. James Hitchcock and Mr. Tony Burns).
78. **Monday 18 March 2013:** Ex RVL CEO, Rob Hines, is interviewed at my office.
79. **Tuesday 19 March - Wednesday 1 May 2013:** investigation continues; review and analysis of documentation and other evidence undertaken; legal advice sought and Interim Report of findings prepared.
80. **Thursday 2 May 2013:** Interim Report provided to Minister for information and to RVL and Victoria Police inviting response by 24 May 2013.
81. **Tuesday 28 May 2013:** responses both received by this date and final report commences preparation.
82. **Thursday 13 June 2013:** Final Report delivered to the Minister for Racing for tabling in Parliament.