



**Review of the  
Victorian Racing Industry's  
Appeals and Disciplinary Model  
2010–2012**

**Public Report  
December 2013**

**Sal Perna  
Racing Integrity Commissioner**

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## GLOSSARY OF TERMINOLOGY

The Act	<i>Racing Act 1958</i>
ATA	Australian Trainers' Association
The Commissioner	Racing Integrity Commissioner
GOTBA	Greyhound Owners Trainers & Breeders Association Victoria Inc
GRV	Greyhound Racing Victoria
GRV Rules	<i>Greyhounds Australasia Rules (National Rules) and Greyhound Racing Victoria Local Rules</i>
HRV	Harness Racing Victoria
HRV Rules	<i>Australian Harness Racing Rules (National Rules) and Harness Racing Victoria Victorian local Rules</i>
IWP	Implementation Working Party
Lewis Report	<i>A Report on Integrity Assurance in the Victorian Racing Industry</i> by Judge Gordon Lewis, 1 August 2008
Racing Rules	<i>Rules of Racing of Racing Victoria Limited, Australian Harness Racing Rules (National Rules) and Harness Racing Victoria Victorian local Rules, and the Greyhounds Australasia Rules (National Rules) and Greyhound Racing Victoria Local Rules</i>
RAD	Racing Appeals and Disciplinary
RAD Board	Racing Appeals and Disciplinary Board
RASL	Racing Analytical Services Limited
RAT	Racing Appeals Tribunal
Register	A register of matters heard by the RAD Boards, maintained by the Registrar

Registrar	The Boards Registrar appointed pursuant to section 83OE of the <i>Racing Act 1958</i>
RVL	Racing Victoria Limited
RVL Rules	<i>Rules of Racing of Racing Victoria Limited</i>
VCAT	Victorian Civil and Administrative Tribunal
VJA	Victorian Jockeys' Association
VRI	Victorian Racing Industry
VTDA	Victorian Harness Racing Trainers and Driver Association

## EXECUTIVE SUMMARY

### Background

In 2008, Judge Gordon Lewis AM undertook an extensive review of integrity assurance systems in the Victorian Racing Industry (**VRI**) and produced *A Report on Integrity Assurance in the Victorian Racing Industry (the Lewis Report)*.

Judge Lewis's principal recommendations regarding the racing appeals and disciplinary (**RAD**) system were:

- (a) The merger of the three separate bodies established by Racing Victoria Limited (**RVL**), Harness Racing Victoria (**HRV**) and Greyhound Racing Victoria (**GRV**) to hear racing appeals and disciplinary matters into a single appellate and disciplinary body, which would have jurisdiction to hear appeals and disciplinary matters from all three codes;
- (b) The modelling of the single appellate body on the RVL RAD Board, to be headed by an independent Chairman, appointed by the Minister; and
- (c) The abolition of the Racing Appeals Tribunal (**RAT**), which had been established for the hearing of racing related appeals, and the introduction of a legislative right to seek Victorian Civil and Administrative Tribunal (**VCAT**) review of decisions made by the RAD Board.<sup>1</sup>

Following the release of the Lewis Report in August 2008, the Government established a joint Victorian Government and VRI Implementation Working Party (**IWP**) to consider Judge Lewis's recommendations and report on their implementation. The final position of the IWP involved a deviation from Judge Lewis's recommendations in one major respect: instead of one RAD Board for all codes, it was decided that a separate RAD Board would operate in each code. This alternative model was put in place through amendments to the *Racing Act 1958 (the Act)*.<sup>2</sup>

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<sup>1</sup> Judge G. D. Lewis, AM, *A Report on Integrity Assurance in the Victorian Racing Industry*, 1 August 2008, pp 14 -15.

<sup>2</sup> *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009*

The IWP proposed a review of the operation of the system after 12 months by the Racing Integrity Commissioner (**the Commissioner**) after the creation of such a position.

This report sets out the results of the review recommended by the IWP.

Consistent with the IWP's recommendation, my review examined the operation of the three code RAD Board model to determine its effectiveness in addressing the concerns raised by Judge Lewis. This report examines whether a single cross-code serious offence and appellate body, as proposed by Judge Lewis, should be considered further and analyses the effectiveness of VCAT as a second-tier appellate body.

### **Methodology**

I have undertaken this review in two phases: a consultative process and a statistical analysis. In April 2011, I wrote to 33 stakeholders seeking their input into the review. I received 11 responses, nine of which contained views on the operation of the RAD Boards and / or VCAT. My office also commenced collecting data from the RAD Boards Registrar (**the Registrar**), VCAT and the controlling bodies (RVL, HRV and GRV) regarding charges, hearings, decisions and penalties.

The IWP envisaged that the review would be conducted after the new model had been in operation for 12 months and I commenced the review on that basis. However, it quickly became apparent there was insufficient data or experience of the system on which to base any conclusions about its effectiveness after such a short timeframe. Accordingly, the timeframe was extended to two years (1 March 2010 to 28 February 2012) and, in February 2012, industry stakeholders were given a further opportunity to contribute their views to the review. I received a further six submissions. In July 2013, I distributed an interim report to key stakeholders and received 11 responses.



## Findings and Recommendations

### *The Racing Appeals and Disciplinary Boards*

Part 2 of the report examines the effectiveness of the three RAD Board structure in addressing the concerns raised by Judge Lewis. I have considered whether the original proposal of Judge Lewis for one cross-code RAD Board, rather than three code-specific boards, should be adopted. I have found there is no general support in the industry for one RAD Board and, based on the results of my review, concur that the three RAD Board model should continue, but with amendments to some structural and administrative features.

#### *RAD Board Composition*

The review has found limited diversity in the composition of the HRV RAD Board due to the regular practice of only two members sitting on panels for HRV matters, as well as the apparent under-utilisation of the Deputy Chairperson for HRV matters. The review results also indicate that most Board members have limited opportunities to participate in RAD Board hearings, with many sitting on very few hearings in a year. These limited opportunities are likely to impact on their knowledge of processes, trends and patterns, continuity and consistency of decisions and penalties. The establishment of a quorum requirement of three members for all RAD Board hearings (for serious offences and appeals) would increase Board member involvement and enhance independence and diversity of views in decision-making.

The review has also identified discrepancies between the codes in respect of the appointment of RAD Board members and restrictions placed on the interests of members. It would be advantageous to perceptions of independence to introduce additional mechanisms to guard against and manage conflicts of interest in respect of all three RAD Boards.

## Recommendations

1. That the *Racing Act 1958* be amended so that the requirements regarding the appointment and regulation of the Chairpersons, Deputy Chairpersons and ordinary members of the HRV and GRV RAD Boards are replicated for the RVL RAD Board. That is, the Minister should

appoint an eligible person to be Chairperson of the RVL RAD Board and, on the recommendation of RVL, appoint two eligible persons to be the Deputy Chairpersons of the RVL RAD Board. The restrictions on the interests and activities of the members of the HRV and GRV RAD Boards, as contained in sections 50D, 50E and 50F and sections 83D, 83E and 83F of the Racing Act respectively, should also apply to RVL RAD Board members.

2. That the diversity of RAD Board panels and the experience of individual members in hearing matters be increased by:
  - (a) Encouraging more frequent use of Deputy Chairpersons to preside over (or sit on) RAD Board matters; and
  - (b) Establishing a minimum quorum under the Act that requires three RAD Board members to sit on all substantive hearings (one of whom must be either the Chair or Deputy Chair). Such requirement to be waived by the presiding member for hearings of urgent matters where a third RAD Board member is not available.
3. That the procedural document (referred to in Recommendation 5 for introduction) include a prohibition on a RAD Board member taking part in any hearings where he or she has a conflict of interest and the further requirement that such an interest to be declared and recorded.

### *Consistency in Processes*

Consistency in RAD Board processes is dependent on the rules of racing and administrative processes governing their operations. I have found there are opportunities to amend the racing rules governing each code to promote consistency in administrative procedures between the RAD Boards.

The review identified that the Racing Act provisions relating to the Registrar role provide for administrative and data collection functions but do not give the Registrar an opportunity to assist in the development of the procedures governing the operations of the RAD Boards. As a result, the role does not appear to operate as intended by the IWP and it should be assigned a more

proactive role by the controlling bodies.

### **Recommendations**

4. That the three controlling bodies meet together with the Registrar to identify opportunities to improve and standardise procedures relating to RAD Board hearings, particularly as they relate to the involvement of third parties such as Racing Analytical Services Limited. Further, that such meetings should occur as required and at least every two years.
5. That the controlling bodies and the Registrar develop a document setting out procedures governing RAD Board matters, which is endorsed by the RAD Board Chairs and published by the Registrar and Deputy Registrars on each controlling body's website.

### *Consistency of Penalties*

During the course of the review, it became apparent that there are significant inconsistencies in the application of penalties by the RAD Boards. The inconsistencies apply in three areas: between the penalties applied by Stewards for an offence and by that RAD Board on appeal; the penalties applied by different panels of the same RAD Board for similar offences; and the penalties applied by the three RAD Boards for similar offences. More effective information sharing is a key requirement for enhancing consistency in decision making.

### **Recommendations**

6. That the Office of the Racing Integrity Commissioner undertake research to support and assist the codes to develop sanction guidelines for both stewards and RAD Boards.
7. That RAD Boards record their reasons for decisions and the Registrar or Deputy Registrars publish the reasons on the relevant code's website.
8. That the Registrar convenes meetings of the three Chairs and/or Deputy Chairs of the RAD Boards as required and at least annually. Such meetings should be used to discuss problems encountered, exchange information, review trends, discuss issues and review penalties imposed.

The Racing Integrity Commissioner should contribute to the meetings by making available statistical data and analysis regarding the activities of the RAD Boards and VCAT.

9. That the usefulness of the Register be improved by:
  - (a) the Registrar consulting with the Chairs of the three RAD Boards to determine if and how the Register can be enhanced to increase its accessibility for RAD Board members during hearings and improve its searchability for specific types of information; and
  - (b) the controlling bodies support the Registrar and Deputy Registrars by ensuring the RAD Boards have live access to the Register during hearings.

#### *RAD Board Processes*

During the review, concerns were raised by controlling bodies about the potential for sanctioned persons to manipulate the appeals process to delay the imposition of penalties. For RVL, there was a particular concern with appeal timeframes around the Spring Racing Carnival. For GRV and HRV, there was concern that the absence of application fees for appeals encouraged frivolous appeals. While I understand the concerns of RVL during this period of the racing calendar, I do not support its recommendation to shorten the appeal period in order to address their concerns. In respect of GRV and HRV concerns, I consider there are adequate mechanisms available to RAD Boards to dismiss frivolous appeals if they consider it appropriate.

I find insufficient supporting information to endorse the proposal by GRV that the appeal timeframes should be extended to three business days, rather than three calendar days, or to increase the appeal threshold for GRV matters from \$250 to \$500.

#### **Recommendation**

10. That the procedural document referred to in Recommendation 5 stipulates that the period for lodging appeals from stewards' decisions relates to calendar days, not business days. This information should be

contained in the prescribed forms issued by the stewards when sanctions are imposed and in a conspicuous place on each code's website. It should be made clear to HRV and GRV participants that if an appeal period expires on a Saturday, Sunday or public holiday, the appeal time is extended to expire on the next business day.

### ***Victorian Civil and Administrative Tribunal reviews of RAD Board decisions***

A key change made as part of the Lewis Reforms was the abolition of the RAT and the introduction of a legislative right to seek Victorian Civil and Administrative Tribunal (VCAT) review of decisions made by the RAD Boards. Part 3 of the report addresses the stakeholder views regarding this arrangement and the data relating to outcomes.

During the review, significant concerns were raised about VCAT's efficiency when dealing with racing matters. Problems related to delays between the lodgement of appeals and their finalisation; member expertise; and administrative efficiency. Concerns were also raised about the jurisdiction of VCAT. I note that although there are examples of VCAT adopting good processes for the hearing of RAD Board appeals, particularly with respect to RVL matters, there are a number of areas where processes and procedures need to be improved if they are to meet the needs of the VRI.

Recent discussions with the President of VCAT indicate there is potential for VCAT processes to be changed or implemented to address the concerns of the industry participants.

### **Recommendations**

11. That a specific VCAT Registrar be assigned to manage all racing matters.
12. That VCAT develop a pool of at least two VCAT members (with non-RAT backgrounds) available to hear racing matters, in addition to the former RAT members who are currently available.
13. That VCAT ratifies a Practice Note to introduce policies/practices to address existing concerns regarding racing appeal matters, particularly in

respect of timeframes.

14. That the *Racing Act 1958* be amended so that VCAT's jurisdiction to review decisions of RAD Boards is limited to decisions made by RAD Boards in their original jurisdiction. For matters that RAD Boards hear in their appellate jurisdiction, any further appeals should be to the Supreme Court on errors of law only.

## **PART 1 - INTRODUCTION**

### **Background**

#### ***Lewis Review***

1. In 2008, Judge Gordon Lewis AM undertook an extensive review of integrity assurance systems in the VRI and produced a report containing 63 individual recommendations for changes to integrity assurance practices and processes. Judge Lewis made 14 recommendations relating to the reform of appeals and disciplinary processes. A full list of these recommendations is contained in **Appendix A**.
  
2. Judge Lewis's principal recommendations regarding the appeals and disciplinary system were:
  - (a) The merger of the three separate bodies established by Racing Victoria Limited (**RVL**), Harness Racing Victoria (**HRV**) and Greyhound Racing Victoria (**GRV**), to hear racing appeals and disciplinary (**RAD**) matters into a single appellate and disciplinary body, which would have jurisdiction to hear appeals and disciplinary matters from all three codes;
  
  - (b) The single appellate body to be modelled on the RVL RAD Board, and headed by an independent Chairman, appointed by the Minister; and
  
  - (c) The abolition of the Racing Appeals Tribunal (RAT), which had been established for the hearing of racing related appeals, and the introduction of a legislative right of review of decisions made by the RAD Board to Victorian Civil and Administrative Tribunal (VCAT).<sup>3</sup>

#### ***Implementation Working Party***

3. Following the release of the Lewis Report in August 2008, the Government established a joint Victorian Government and VRI Implementation Working Party (IWP), chaired by the Department of Justice and involving representatives from Victoria Police and the three racing codes.

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<sup>3</sup> Lewis, op. cit., pp. 14 - 15.

4. The IWP was established to consider Judge Lewis's recommendations and report on their implementation. Of the changes recommended by Judge Lewis, the IWP identified the establishment of a single appellate and disciplinary body for the three codes as the most significant structural change to the racing industry.<sup>4</sup>
5. The IWP also noted the concerns raised by RVL in relation to the creation of a single RAD Board, particularly the concern that such a body would erode the RVL Board's capacity to provide governance and accountability, and would ultimately be detrimental to the integrity of the thoroughbred racing industry.<sup>5</sup>
6. Representatives of RVL, GRV and HRV proposed an alternative model involving the establishment of a RAD Board for each of the codes. The representatives also proposed that the alternative model involve the use of a common RAD Boards' Registrar to oversee the appeals and disciplinary processes of the three RAD Boards and ensure procedural consistency across the three codes.<sup>6</sup>
7. Following consultation with Judge Lewis, the IWP recommended that if the alternative model proposed by the three controlling bodies were to be adopted, its operation should be reviewed after 12 months by the Racing Integrity Commissioner (the Commissioner), the creation of which was another Lewis recommendation, to examine its effectiveness and determine whether a single appellate body should be considered further.<sup>7</sup>
8. The alternative model, consisting of three code-specific RAD Boards, was subsequently implemented by amendments to the *Racing Act 1958 (the Act)*.<sup>8</sup> In introducing these amendments to the Parliament, the then Minister for Racing, the Honourable Rob Hulls, endorsed the recommendation of the IWP that the model adopted be the subject of a

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<sup>4</sup> Implementation Working Party, *Implementing the recommendations arising from the Review of Integrity Assurance in the Victorian Racing Industry by Judge Gordon Lewis AM*, p. 23.

<sup>5</sup> Implementation Working Party, *op. cit.*, p. 23.

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*, p. 25.

<sup>8</sup> *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009*



review by the Commissioner after 12 months of operation.<sup>9</sup>

9. The new racing appeals structure came into operation on 1 March 2010.

The key changes included:

- (a) The establishment of new RAD Boards for GRV and HRV, based on the model adopted by RVL;
- (b) The abolition of the RAT; and
- (c) The creation of a right to appeal decisions made by the RAD Boards to VCAT.

### ***Key Features of the three RAD Board model***

10. The new HRV and GRV RAD Boards were established under the Act and the provisions governing the bodies were designed to mirror those applying to the RVL RAD Board.<sup>10</sup> The RVL RAD Board is not regulated by the Act and is created entirely under the RVL Rules of Racing.<sup>11</sup>

11. The three RAD Boards each have jurisdiction to:

- (i) Hear and determine appeals against penalties imposed by racing stewards (appeal jurisdiction); and
- (ii) Hear and determine charges laid by racing Stewards in relation to "serious offences" (original jurisdiction).<sup>12</sup>

12. The definition of "serious offence" is contained in each code's rules of racing (**the Racing Rules**).<sup>13</sup>

13. Each RAD Board consists of a Chairperson, Deputy Chairperson and a pool of up to 15 other members.<sup>14</sup> A common Registrar role was

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<sup>9</sup> *Racing Legislation Amendment (Racing Integrity Assurance) Bill 2009*, Second Reading Speech, Legislative Assembly, Hansard, 29 July 2009, p. 2387.

<sup>10</sup> *Racing Act 1958*, Part IIA, Part IIIA.

<sup>11</sup> *The Rules of Racing of Racing Victoria Limited*, LR 6A - 6F.

<sup>12</sup> *Racing Act 1958*, ss 50C(b) and 83C(b).

<sup>13</sup> See *Rules of Racing of Racing Victoria Limited (RVL Rules)*, *Australian Harness Racing Rules (National Rules)* and *Harness Racing Victoria Victorian local Rules (HRV Rules)*, and the *Greyhounds Australasia Rules (National Rules)* and *Greyhound Racing Victoria Local Rules (GRV Rules)*.

<sup>14</sup> *Racing Act 1958*, ss 50D(1) and 83D(1), RVL Racing Rules LR 6A(1).

established under s 83OE of the *Racing Act 1958* (the Act) to assist in the administration of the RAD Boards' operations.

14. An appeal from the decision of a RAD Board may be made to VCAT.<sup>15</sup>

### **Methodology**

15. My review commenced in April 2011 and consisted of two phases, a) a stakeholder consultation process and b) a statistical analysis.

### **Scope**

16. Consistent with the IWP's recommendation, my review examined the operation of the three RAD Board model to evaluate its effectiveness in addressing the concerns raised by Judge Lewis. I also considered whether a single appellate body, as originally proposed by Judge Lewis, but later altered by the IWP, should be considered further.
17. The scope of my review also included consideration of the issues relating to the appeals and disciplinary system more generally, as raised during the consultation process.

### **Consultation**

18. The consultative process was undertaken to seek the views of stakeholders regarding the effectiveness of the current racing appeals and disciplinary structure and processes.
19. During the first round of consultation, I sought feedback from 33 VRI stakeholders connected with 12 organisations.
20. These organisations included:
- (a) The controlling bodies: RVL, HRV and GRV;
  - (b) VCAT;
  - (c) The three RAD Boards - Chairperson, Deputy Chairperson and Registrars;

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<sup>15</sup> *Racing Act 1958*, s 83OH. An application must be made within 28 days of a decision being made, or reasons for the decision being given, *Racing Act*, s 83OI.

- (d) Department of Justice;
- (e) Trainers - Australian Trainers' Association (**ATA**), Greyhound Owners Trainers & Breeders Association Victoria Inc (**GOTBA**), Victorian Harness Racing Trainers and Drivers Association (**VTDA**); and
- (f) Victorian Jockeys' Association (**VJA**).

21. I received 11 responses from seven organisations in response to my initial contact. Many of the responses were drafted on behalf of organisations as a whole rather than from individuals. Nine responses provided formal submissions to the consultation process.<sup>16</sup>

22. A complete list of the organisations and individuals that provided a response to the first stage of the consultation process is below.

**Table 1: Individuals providing a response to the first stage of the consultation process**

Name and Position	Organisation	Dated
Jim Nelms, Principal Registrar	VCAT (letter of acknowledgement only, relied on the submission of President of the Tribunal)	27 April 2011
Ross Kennedy, Executive Director	Gaming and Racing, Department of Justice (letter of acknowledgement only, no formal submission provided)	4 May 2011
John Wardle, Chairman	GRV RAD Board	4 May 2011
John Stephens, Chief Executive Officer	GRV (submission provided on behalf of GRV)	4 May 2011
Tony Burns, Deputy Chairman	HRV RAD Board	4 May 2011
Rob Hines, Chief Executive Officer	RVL (submission provided on behalf of RVL)	5 May 2011
Justice Iain Ross AO, President	VCAT	5 May 2011
T.D. O'Connor, Deputy Chairman	GRV RAD Board	5 May 2011
John Anderson, Chief Executive	HRV (submission provided on behalf of HRV)	5 May 2011
B.W. Collis QC, Chairman	HRV RAD Board	9 May 2011
Geoff Collins, President	GOTBA	26 May 2011

<sup>16</sup> The figure of nine formal submissions received in the first phase of the review does not include the letters of acknowledgement received from VCAT or the Department of Justice, and excludes any follow-up correspondence that I may have received.

23. During the undertaking of the statistical analysis, I found there was a lack of detailed information available from both the RAD Boards and VCAT. A substantial amount of information which would be meaningful (e.g. panel composition, costs, length of hearing times etc) could not be easily obtained.
24. I was also of the view that a twelve month review would provide insufficient amount of statistical data to permit the effective identification of trends and patterns.
25. To address these concerns I altered the terms of reference for the conduct of the review to examine the appeals and disciplinary model over a period of two years.
26. Processes were then put in place for the collection, recording and reporting of data from the appellate bodies. All stakeholders who had been contacted as part of the first round of consultations were notified of the decision to extend the review period and offered the opportunity to provide additional feedback. In recognition of the substantial amount of drug-related matters identified, one additional organisation, Racing Analytical Services Limited (**RASL**), which had not been invited to contribute to the first phase of the consultation process, was also given an opportunity to provide submissions.
27. In response to the invitation for further comment, I received a further 14 replies, the majority of which did not contribute any new views or formal submissions to the consultation, but simply referred to the submissions already provided.
28. Of the replies that provided substantive submissions to the review, three were from organisations that had not responded to the first round of consultations.
29. Given the opportunity to make a further submission, RVL consulted with HRV, GRV and relevant stakeholders to formulate a consolidated VRI submission and engaged his Honour Justice David Jones AM to assist in its preparation.

30. Following receipt of the VRI submission, I met with Justice David Jones, Mr Ron Beazley (Independent Member of the RVL Integrity Sub-Committee) and Mr Mark Close (RVL Government Relations Manager and Company Secretary) to discuss the submission's contents. Two additional submissions were also received from organisations indicating their support for all or part of the changes proposed by the VRI. Therefore, in total, I received six formal submissions during the second round of consultations.<sup>17</sup>
31. A complete list of the recommendations made by the VRI in its industry submission is contained at **Appendix B**.
32. A complete list of the organisations and individuals providing a reply to my request for further comment is below.

**Table 2: Individuals providing a response to the second stage of the consultation process**

Name and Position	Organisation	Dated
John Stephens, CEO	GRV (referred to earlier comments)	7 Feb 2012
John Alducci, Chief Executive	ATA (provided first submission on behalf of ATA)	24 Feb 2012
Russell Lewis, Chairman	RVL RAD Board (provided first submission)	23 Feb 2012
Patti Ladd, Secretary	GOTBA (referred to earlier comments)	25 Feb 2012
John Stephens, CEO	GRV (referred to earlier comments and addressed a small number of additional issues)	28 Feb 2012
Brian Forrest, Deputy Chair	RVL RAD Board (referred to proposed independent review of the operations of the RAD Board)	28 Feb 2012
Rob Hines, CEO	RVL (referred to earlier comments and the intention to undertake an independent review of racing appeals and disciplinary structures)	29 Feb 2012
John Wardle, Chairman	GRV RAD Board (referred to earlier comments and addressed a small number of additional issues)	7 March 2012

<sup>17</sup> The figure of six formal submissions received in the second phase of the review does not include the acknowledgement letters I received that referred simply to earlier comments made by the organisation/individual (however, I have considered any additional comments provided in these letters).

Name and Position	Organisation	Dated
Rob Hines, CEO	RVL (requested an opportunity to make a detailed submission)	27 March 2012
Dr John H Vine, Laboratory Director	RASL (provided first submission on behalf of RASL)	2 May 2012
Judge John Bowman, Acting President	VCAT (did not detail any particular issues)	23 May 2012
Rob Hines, CEO; John Anderson, CEO, John Stephens, CEO	RVL, HRV and GRV (joint VRI submission prepared with the assistance of His Honour Justice David Jones)	1 June 2012
Des O'Keeffe, Executive Officer	VJA (indicated support, in part, for VRI submission)	29 June 2012
John Alducci, Chief Executive	ATA (indicated support for changes proposed in VRI submission)	12 July 2012

### ***Statistical Analysis***

33. My office undertook a comprehensive statistical analysis of serious offence charges and appeals before the three RAD Boards between 1 March 2010 and 28 February 2012 and prepared a cross-code table from the statistical data to illustrate a comparison of serious offence charges and appeals by each code.
34. A statistical analysis was also conducted of the appeals lodged with VCAT during the same period. Within the report, 2010/11 refers to the period from 1 March 2010 (commencement of the new appeals and disciplinary model) to 28 February 2011; 2011/12 refers to 1 March 2011 to 28 February 2012.
35. The serious offence statistical analysis was sorted into categories including: persons charged; rules relating to serious offences; prohibited substances; representation at hearings; pleas; RAD Board decisions; duration of hearings; RAD Board composition; and use of electronic equipment.
36. The appeal statistical analysis was sorted into categories including: appellants; appeals withdrawn; basis of appeals; charges appealed; stays of proceedings; representation at hearings; RAD Board decisions; duration of appeal hearings and RAD Board composition.
37. The VCAT statistical analysis was sorted into categories including: appeals

lodged by code; respondents; stay hearings; representation at hearing; outcome; length of hearing; and panel members who presided at the hearing.

### ***Interim Report and Feedback***

38. In July 2013, I distributed an interim report containing 18 recommendations to the stakeholders who had contributed to the consultation phase of the review. Copies were also provided to other relevant parties, such as the Minister for Racing. During August and September 2013, feedback was received from 11 stakeholders.
39. As a result of feedback from stakeholders and further review of information and statistics, I revised my position on the appropriateness of three of the proposed recommendations.
40. In my interim report, I proposed that the Registrar be given the authority and responsibility to facilitate the review of procedures governing the operation of the three RAD Boards on a regular basis to improve their consistency and efficiency (Proposed Recommendation 7). Upon reflection, I consider such a review can be incorporated into the meetings between the controlling bodies and Registrar that are proposed in Recommendation 4.
41. Proposed Recommendation 13 sought to confer power on the RAD Boards to dismiss matters they deem frivolous, vexatious, misconceived or lacking in substance. Proposed Recommendation 14 conferred power on RAD Boards to exclude representatives of parties who were ill-equipped, inappropriate, disruptive or not representing the best interests of the person charged. Responses to the interim report indicated that sufficient powers already exist to manage such situations. There were also concerns that the power to exclude representatives may affect the right of a party to natural justice in certain circumstances. I have therefore determined that the proposed recommendations are not necessary.
42. I have made amendments to Proposed Recommendation 1 as a result of legislative changes currently before the Victorian Parliament and I have

made minor changes to other recommendations in response to the views of stakeholders.

### **Report Structure**

43. The remainder of the report is divided into parts for ease of perusal, as follows:

- (a) Part 2 – RAD Boards: sets out stakeholder views and relevant data, and evaluates the effectiveness of the three RAD Board model;
- (b) Part 3 - VCAT: sets out stakeholder views and relevant data, and evaluates the effectiveness of VCAT as an appellate body;
- (c) Part 4 - Statistical Analysis: contains the results of the statistical component of the Review; and
- (d) Appendices: contains additional data referred to within the report and includes the Lewis Report recommendations (**Appendix A**); the recommendations proposed in the VRI submission (**Appendix B**); and a complete set of my recommendations (**Appendix C**).



## **PART 2 – THE RACING APPEALS AND DISCIPLINARY BOARDS**

44. Judge Lewis identified the following key concerns in relation to the appeals and disciplinary system that existed prior to 2010:
- (a) Major discrepancies between the disciplinary and appeals processes of the three codes;
  - (b) Penalties imposed for offences of a similar nature varied across the codes;
  - (c) The internal appeal processes applicable to some of the codes appeared to demonstrate a lack of distance and independence, which might indicate a lack of objectivity and natural justice; and
  - (d) The jurisdiction of some of the appeal and disciplinary bodies to consider matters was limited.<sup>18</sup>
45. In 2010, significant progress was made in implementing Judge Lewis's recommendations when the tribunals used by HRV and GRV were abolished and RAD Boards were established. The significant departure from his recommendations was the establishment of three RAD Boards, rather than one.
46. Of the 15 substantive submissions received during this consultation process, 11 gave views in relation to whether a single appeals and disciplinary body should be considered further. The majority of these submissions (eight in total) indicated a strong preference for the three RAD Board structure, and did not support the single RAD Board favoured by Judge Lewis.
47. Only three submissions supported further consideration of a single RAD Board. In general, the submissions that raised concerns regarding the consistency of procedures - mainly made by persons using or having experience with more than one of the RAD Boards - also tended to advocate or lend support to the adoption of a single body to hear serious offences and appeals across the codes.

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<sup>18</sup> Lewis, *op. cit.*, pp. 37-39.

48. The key reasons advanced against the adoption of a single body were:
- (a) The importance of specialist knowledge of the particular features of each of the codes, which is retained by having three separate RAD Boards;
  - (b) The possibility that a single RAD Board would lead to less efficient outcomes in the hearing of appeals and disciplinary matters; and
  - (c) The view that individual RAD Boards most appropriately and effectively support particular codes.
49. The HRV RAD Board Chairman was "firmly of the view that Harness Racing Victoria is best served by having its own Appeals and Disciplinary Board. Harness Racing has a number of traits that are peculiar to it, and the industry is well served by Board Members who are well versed in all matters of harness racing".<sup>19</sup>
50. HRV stated that due to "the unique nature and technical differences between each of the three codes" it "could not be comfortably satisfied that a single RAD [Board] across the three codes would be more efficient or reflect more appropriate outcomes".<sup>20</sup>
51. RVL expressed the view that "a three code RAD Board would seriously erode Racing Victoria's capacity to provide effective governance and accountability and would ultimately be detrimental to the integrity of thoroughbred racing".<sup>21</sup>
52. GRV's feedback in relation to a single appellate body was that "GRV strongly believes in the necessity of maintaining the current appeal and disciplinary system and does not support any concept of a single appellant body".<sup>22</sup>
53. In contrast to the views of most industry participants, the Deputy Chairman of the HRV RAD Board expressed the view that "a single RAD Board for all

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<sup>19</sup> Submission of Chairman, HRV RAD Board, 9 May 2011.

<sup>20</sup> Submission of HRV, 5 May 2011, p. 2.

<sup>21</sup> Submission of RVL, 5 May 2011, p. 1.

<sup>22</sup> Submission of GRV, 4 May 2011, p. 2.

three codes could work well and that this should be explored... primarily because of a current lack of consistency across the rulings made and penalties imposed for like offences across the various RAD Boards”.<sup>23</sup>

54. RASL, as a body that works across the codes, raised concerns about the slight variations in procedures for producing statements for the three RAD Boards, which, it said, creates confusion and adds to the complexity of the process. RASL stated that “[i]t is therefore possible that a single appellate body having a common procedure for all drug-related racing hearings would provide a simpler and more straightforward approach which would save RASL time and effort and reduce the risk of error”.<sup>24</sup> However, the submission noted that the time taken to hear drug-related matters had extended under the RAD Board system and expressed concern that a single RAD Board could result in matters being delayed further.
55. The views of industry participants and the data analysed in the remainder of this Part indicate shortcomings with the current arrangements. Whilst some issues arise from the three RAD Board structure, a number relate primarily to administrative and communication issues that would endure in a single RAD Board model in the absence of some intervention and reform. Furthermore, as indicated above, I have found during the consultation process there is little support within the industry for a single body to hear serious offences and first-tier appeals across the codes. Therefore, on balance, I consider that the further steps outlined below should be taken to improve the current three RAD Board model, rather than a structural change to this aspect of the disciplinary process.
56. This section draws together the issues addressed by Judge Lewis, the views of industry participants and the available data associated with those issues. The issues include the regulation and composition of RAD Boards, consistency of hearing procedures and penalties, and jurisdictional matters. This Part also sets out the views of industry participants on practical issues that were either not specifically addressed by Judge Lewis or which have arisen as a consequence of the structural changes

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<sup>23</sup> Submission of Deputy Chair, HRV RAD Board, 4 May 2011.

<sup>24</sup> Submission of RASL, 2 May 2012, p.1.

implemented in 2010. I also set out proposed recommendations for a way forward.

## **Regulation and Composition of the RAD Boards**

### ***Regulation of the RAD Boards***

57. As a starting point, I examined the regulatory provisions governing each Board. I found the differences in the provisions of the Act and the individual Racing Rules of each code that regulate the RAD Boards undermine the objective of ensuring consistency between the three RAD Boards and as such remain an ongoing concern.
58. In my interim report, I stated that consistency between the codes should be achieved by incorporating the RVL RAD Board into the Act. I noted differences between the codes governed by the Act on the one hand and the RVL RAD Board on the other in respect of the procedures governing the RAD Boards.. Since I produced my interim report, legislation has been introduced into the Victorian Parliament to require the RVL Rules to include provisions for the management of RVL RAD Board matters that are identical to the legislative provisions governing the HRV and GRV RAD Boards.<sup>25</sup>
59. However, in addition to the differences in RAD Board processes that are currently being addressed by Parliament, there are differences between the RVL RAD Board on one hand and GRV and HRV RAD Boards on the other in respect to the appointment of members.
60. Judge Lewis noted that the RVL RAD Board had been "universally praised" in the consultation phase of his review and he recommended that the proposed single RAD Board be based on the RVL RAD Board model.<sup>26</sup>
61. However, Judge Lewis's recommendations departed in important respects from the way in which the RVL RAD Board has been established. He recommended imposing restrictions on the positions that the Chairperson

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<sup>25</sup> Justice Legislation Amendment (Miscellaneous) Bill 2013, s 40.

<sup>26</sup> Lewis, *op. cit.*, p. 38.

and the Deputy Chair could hold whilst being members of the RAD Board and that an "independent" Chairperson should be appointed by the Minister (and independently of the controlling bodies).

62. Prior to the current system being implemented, the IWP reported that it was RVL's position "that the proposal to establish a three code Board will seriously erode the RVL Board's capacity to provide governance and accountability..."<sup>27</sup> RVL's submission to this Review reiterated its earlier position.<sup>28</sup> In my interim report I noted that this rationale for opposing a single RAD Board raises concerns as it appears to suggest the existence of, or a desire for, a level of control or influence by the RVL Board over the RVL RAD Board. RVL rejected this characterisation of its position in its response to the interim report. I maintain that RVL's statements are concerning but I accept its argument that there is no information to suggest that the RVL RAD Board has been influenced by the RVL Board during its almost ten years of operation.
63. Nevertheless, RVL's position makes the recommendations of Judge Lewis (regarding an independently appointed Chairperson and the management of conflicts of interest) all the more relevant. To date, no changes have been made to the RVL Rules to implement Judge Lewis's recommendations regarding the appointment of RAD Board members.
64. Key concerns with respect to the RVL Rules governing the appointment of members of the RAD Board are:
- (a) Both the Chair and Deputy Chair of the RVL RAD Board are appointed directly by the Directors of RVL - the Minister has no involvement in these appointments;<sup>29</sup>
  - (b) As with the HRV and GRV RAD Boards, both the Chair and Deputy Chair of the RVL RAD Board must be qualified lawyers and must not hold an interest in a racehorse or hold office in any racing club.<sup>30</sup>

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<sup>27</sup> Implementation Working Party, op. cit., p. 23.

<sup>28</sup> RVL, op. cit., p. 1.

<sup>29</sup> RVL Rules, LR 6A(1)(a) and (b).

<sup>30</sup> RVL Rules, LR 6A(1)(b).

However, there is no broader prohibition on RVL Chairs or Deputy Chairs being a licensed person under the rules of a controlling body or holding positions in other controlling bodies or other organisations that might generate a conflict of interest.

- (c) There is no prohibition on other members of the RVL RAD Board holding positions in the controlling bodies. However, such a prohibition does apply to GRV and HRV RAD Board members.

65. I note there is no support from RVL or ATA for addressing these issues through incorporating the RVL RAD Board into the Act. RVL also pointed out that there is no information to suggest that the RVL RAD Board has ever experienced interference as a result of its connection to RVL. Nevertheless, I think it is appropriate for the Minister to appoint the Chair and Deputy Chairs of the RVL RAD Board, as occurs for the GRV and HRV RAD Boards.<sup>31</sup> I also recommend the regulation of the interests of RVL RAD Board members through the Racing Act in the same way as the interests of the members of the GRV and HRV RAD Boards are regulated.

### **Recommendation**

- 1. That the *Racing Act 1958* be amended so that the requirements regarding the appointment and regulation of the Chairpersons, Deputy Chairpersons and ordinary members of the HRV and GRV RAD Boards are replicated for the RVL RAD Board. That is, the Minister should appoint an eligible person to be Chairperson of the RVL RAD Board and, on the recommendation of RVL, appoint two eligible persons to be the Deputy Chairpersons of the RVL RAD Board. The restrictions on the interests and activities of the members of the HRV and GRV RAD Boards, as contained in sections 50D, 50E and 50F and sections 83D, 83E and 83F of the Racing Act respectively, should also apply to RVL RAD Board members.**

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<sup>31</sup> The RVL Rules were recently amended to allow for the appointment of two Deputy Chairpersons to the RVL RAD Board. I see no reason why this change should not be replicated in legislation.

***Diversity of RAD Board panel composition***

66. As discussed above, a key concern identified by Judge Lewis in relation to the appointment of members to the proposed RAD Board was the level of independence and integrity of members.<sup>32</sup>
67. The VRI submission proposed that the composition of RAD Boards be broadened to include more members with industry experience, such as trainers, jockeys and drivers, as well as professionals in the field, such as veterinarians and scientists. GOTBA argued for greater distance between GRV and the GRV RAD Board and commented that, despite the previous tribunal being replaced, “to many owners and trainers it’s the same place and the same faces i.e.; nothing’s changed”.<sup>33</sup> However, beyond these points, the composition of RAD Boards was not an issue that attracted significant attention from the contributors to this review. It is, however, an issue that I consider has significant impact on the robustness of the discipline system.
68. Judge Lewis recommended that for each hearing the single RAD Board be made up of the independent Chairman or a Deputy Chairman, plus two of the three representatives from the relevant code.<sup>34</sup> This recommendation was based on Judge Lewis's concerns, noted in his report, regarding the constitution of two-member panels, made up of controlling body board members, to hear disciplinary and appeal matters. Judge Lewis stated that such panels “exemplif[y] my concerns about the manner in which disciplinary proceedings are presently conducted.”<sup>35</sup>
69. Although, in part, Judge Lewis's views were based on a concern about the level of independence of panel members, he indicated a clear preference for a Board panel constituted by a minimum of three members to hear disciplinary matters.
70. Sections 50I and 83I of the Act have been inserted to provide for the

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<sup>32</sup> Lewis, op. cit., pp. 14 - 15.

<sup>33</sup> Submission of GOTBA, 26 May 2011.

<sup>34</sup> Lewis, op. cit., recommendation 4(h), p. 14.

<sup>35</sup> Lewis, op. cit., p. 39.

constitution of the GRV and HRV RAD Boards. These provisions specify the maximum number of members able to sit on a hearing to determine a matter, and that either the Chairperson or Deputy Chairperson must sit on all hearings. However, no minimum quorum has been set in the Act for the HRV or GRV RAD Boards. This situation contrasts with the minimum quorum requirements for hearings of the RVL RAD Board specified in the RVL Rules.<sup>36</sup>

71. Statistical data collated in relation to RAD Board composition during the two-year reporting period indicates that the HRV RAD Board had the least amount of diversity, due largely to the reliance on two-member panels to hear both serious offences and appeals. Over the two-year period, 45 per cent of HRV serious offence hearings and 93 per cent of appeals were presided over by two-member panels.
72. There was also a limited amount of rotation between the Chair and Deputy Chair of the HRV RAD Board, with the Chair sitting on the vast majority of hearings.
73. For the HRV RAD Board, the first year of serious offence hearings showed some diversity in panel composition. Although the Chairman sat on all 17 hearings conducted in this time, he was accompanied by a variety of other panel members. The Deputy Chairman sat on only two hearings during this time, and other panel members sat on at least one hearing, on average sitting on two hearings. In the second year of the reporting period, there was less diversity in the Board composition for the hearing of serious offence matters. The Chair and one member sat on 14 serious offence hearings together, and in 12 of those cases the Chair and the member sat as a two-member panel. The Deputy Chair and two members did not sit on any hearings in the second year of the review.
74. In relation to the hearing of appeals by the HRV RAD Board, in the two-year reporting period almost all hearings were presided over by a two-

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<sup>36</sup> RVL Racing Rule LR 6A(3) provides that the constitution of the Board for hearings must be either (i) a panel of five members of the RAD Board selected by the Chairperson (including either the Chairperson or Deputy Chairperson or both); or (ii) a panel of three members selected by the Chairperson, which must include the Chairperson or the Deputy Chairperson or both.



person panel. The Chairman also sat on 66 of the 71 appeal hearings during the two-year reporting period (approximately 93 per cent of all appeal hearings). In the second year of the reporting period, 16 hearings were presided over by the same HRV RAD Board panel consisting of the Chair and one other member (around 42 per cent of appeals).

75. The RVL RAD Board Chairman presided over the vast majority of hearings, approximately 78 per cent of serious offence hearings and 75 per cent of appeal hearings during the two-year reporting period. Nevertheless, the membership of RVL RAD Board panels was relatively diverse in relation to both serious offence hearings and appeals.
76. In the first year of the reporting period, a panel of the same three members heard only four of the 24 serious offence matters. In the second year of the reporting period, in 50 per cent of cases, the Chair, the Deputy Chairperson and a rotating panel member constituted the panel hearing serious offences. On average, RVL RAD Board members (excluding the Chair and Deputy) sat on three hearings during the first year of the reporting period, and two hearings during the second year of the reporting period.
77. For appeal hearings, the RVL RAD Board also had a mix of members sitting on hearings in the two-year reporting period.
78. The GRV RAD Board sat as a three-member panel for all serious offence hearings and appeals during the two-year period. Fifty two per cent of serious offence hearings during the first year of the reporting period involved the Chair and Deputy Chair sitting together, accompanied by a rotating third panel member. On average, members sat on four hearings each during the first year of the RAD Board's operation. In the second year, there was less diversity in panel composition, with 26 of the 30 serious offence hearing panels being constituted by the Chair, Deputy Chair and a rotating third panel member. The Chair and Deputy sat together on approximately 86 per cent of all serious offence hearings in this period.

79. In relation to GRV appeals, the Chair and Deputy Chair also sat together on a significant number of appeal hearings, accompanied by a third panel member.
80. In its first submission to the consultation process, HRV requested that provisions regarding delegation be varied to allow for the appointment of two Deputy Chairs to the HRV RAD Board. HRV also advocated amending section 50I of the Act to specify when the HRV RAD Board Chairman must delegate a matter to a Deputy Chairman.<sup>37</sup> Although these changes are requested on the basis of improving the efficiency of the HRV RAD Board, it is unclear why the current Deputy Chair was not involved in the hearing of a greater number of matters. I consider the Deputy Chair should preside over a greater number of matters, rather than amending the Act to appoint additional deputies. I note that these concerns of HRV were not reiterated in the further joint VRI submission.
81. An effective measure to increase diversity of Board composition within the HRV RAD Board is the introduction of minimum quorums, requiring a minimum of three members to sit on all RAD Board hearings.
82. For the GRV RAD Boards, the tendency in both serious offence and appeal matters is for the vast majority of matters to be presided over by the Chair and Deputy Chair, accompanied by another panel member.
83. Although the data suggests that rotation of panel members on RAD Board panels occurs, greater diversity in the composition of panels would be achieved by limiting the number of hearings on which the Chair and Deputy Chair sit together, and having other panel members sit more frequently.
84. As indicated above, RVL RAD Board panels tended to be more diverse than other RAD Boards. Nevertheless, panels presided over by the Chairperson, and limited rotation between the Chairperson and Deputy Chairperson, were consistent features of the RVL RAD Board during the reporting period.

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<sup>37</sup> HRV, *op. cit.*, pp. 4 - 5.

85. In regard to the composition of the RAD Boards, the summary table below records the number of members that were appointed to each of the three RAD Boards during the two-year reporting period (excluding the Chairperson and Deputy Chairperson). It also lists the average number of serious offence and appeal hearings on which these members sat during each year of reporting. The table indicates the number of appointed members who did not sit on any hearings during the reporting year.

**Table 3: RAD Board Composition**

<b>RVL RAD Board</b>	<b>2010/11</b>	<b>2011/12</b>
Number of members (excluding the Chair and Deputy Chair) on the RAD Board	12	12-13
Average number of serious offence hearings sat on by each member	3	2 (5 members did not sit on a serious offence hearing)
Average number of appeal hearings sat on by each member	5	4
<b>HRV RAD Board</b>		
Number of members (excluding the Chair and Deputy Chair) on the RAD Board	12	12
Average number of serious offence hearings sat on by each member	2	3 (2 members did not sit on a serious offence hearing)
Average number of appeal hearings sat on by each member	5 (6 members did not sit on an appeal hearing during this period)	6 (4 members did not sit on an appeal hearing in this period)
<b>GRV RAD Board</b>		
Number of members (excluding the Chair and Deputy Chair) on the RAD Board	9	9
Average number of serious offence hearings sat on by each member	4	3
Average number of appeal hearings sat on by each member	3	3

86. I have no concerns with a diversity of views, observations and attitudes by the various members that preside on RAD Board hearings. Such diversity contributes to appropriate levels of distance and independence being maintained by the various RAD Boards, and ensures that all RAD Board members have sufficient knowledge of RAD Board procedures to take an active role in the proceedings. I consider that introducing a minimum

quorum of three for GRV and HRV hearings will increase diversity, reflect best practice and increase the consistency of processes across the three codes.

87. In response to the interim report, HRV indicated that it did not support the notion of requiring a quorum of three members for all RAD Board matters. HRV considered the proposition unnecessary, providing little benefit and increasing costs. GRV agreed to the recommendation in principle but the GRV RAD Board expressed concern that the requirement may create problems if matters must be heard at short notice. In response to these concerns, I have narrowed my recommendation to encompass only substantive hearings (that is, not directions hearings or applications for a stay) and to provide for an exception to the quorum where there is an operational reason why a matter must be heard at short notice and a third member is not available.

### **Recommendation**

2. **That the diversity of RAD Board panels and the experience of individual members in hearing matters be increased by:**
- (a) Encouraging more frequent use of Deputy Chairpersons to preside over (or sit on) RAD Board matters; and**
  - (b) Establishing a minimum quorum under the Act that requires three RAD Board members to sit on all substantive hearings (one of whom must be either the Chair or Deputy Chair). Such requirement to be waived by the presiding member for hearings of urgent matters where a third RAD Board member is not available.**

### **Conflicts of Interest**

88. As indicated above, the VRI submission to the Review advocated for a broadening of RAD Board membership to include industry participants with extensive industry knowledge. The challenge with this approach is the management of greater potential for conflicts of interest which may arise.

Such conflicts could undermine the efficient running of the RAD Boards and raise industry concerns about independence.

89. In accordance with the Lewis Report recommendations, the amendments to the Act introduced a number of changes designed to ensure that members of the HRV and GRV RAD Boards avoid conflicts of interest.<sup>38</sup> However, the amendments do not prohibit the approach to Board membership that is advocated by the VRI submission.
90. The legislative changes included:
- (a) The Chair and Deputy Chair of the HRV and GRV RAD Boards are not to hold a financial or proprietary interest in a racehorse or greyhound, and are not to hold office in the controlling bodies, a racing club or any organisation that might, in the opinion of the Minister give rise to a conflict;<sup>39</sup> and
  - (b) The Chair and Deputy Chair are to resign from office if such an interest or position is obtained.<sup>40</sup>
91. The Minister also has the power to remove a member of the HRV or GRV RAD Board if satisfied that the member is not avoiding any conflicts of interest.<sup>41</sup>
92. These provisions are important in ensuring that appropriately independent persons are appointed to the RAD Boards. There is no express provision in the Act that a member of a RAD Board having a conflict of interest in a particular matter will be prohibited from sitting on that matter. Although such a requirement may be imposed under the general law, it would be preferable for procedural documents to state this explicitly for all three RAD Boards, and also require that where any conflicts of interest arise, they are declared and recorded on a register of conflicts.

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<sup>38</sup> *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009*, Explanatory Memorandum, pp. 3 – 4, 6.

<sup>39</sup> *Racing Act 1958*, ss 50E(2), 50F(2), 83E(2), 83F(2).

<sup>40</sup> *Racing Act 1958*, ss 50E(5), 50F(5), 83E(5), 83F(5).

<sup>41</sup> *Racing Act 1958*, ss 50H, 83H.

## Recommendation

3. **That the procedural document (referred to in Recommendation 5 for introduction) include a prohibition on a RAD Board member taking part in any hearings where he or she has a conflict of interest and the further requirement that such an interest to be declared and recorded.**

## Consistency of Hearing Procedures

93. Judge Lewis expressed concern in relation to major discrepancies between the appeals and disciplinary processes across the three codes.<sup>42</sup> The IWP expected that the creation of a common Registrar role would be effective in addressing Judge Lewis's concerns because it “would ensure procedural consistency across the three RAD Boards and is fully supported by each controlling body”.<sup>43</sup>
94. The legislative amendments that were contained in the *Racing Legislation Amendment (Racing Integrity Assurance) Act 2009* have significantly improved procedural consistency between the codes. The provisions in the Act creating the HRV and GRV RAD Boards were designed to generally be consistent with the RVL Rules that govern the RVL RAD Board. Nevertheless, differences in processes between the codes continue to affect the industry. Some of these differences will be addressed by more consistent regulation of the RAD Boards as recommended above. However, other inconsistencies lie in the Racing Rules and administrative procedures that form the basis for the operations of the RAD Boards.
95. Most contributors to the consultation process did not focus on the need for consistency of processes between the RAD Boards; rather, there was greater reference to the differences between the codes that can be accommodated by a RAD Board for each code. This is not surprising as most industry participants operate within a specific code and do not need to negotiate the processes of more than one RAD Board. The available information does indicate, however, that despite the significant changes

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<sup>42</sup> Lewis, op. cit., p. 38.

<sup>43</sup> Implementation Working Party, op. cit., p. 23.

implemented to improve consistency of hearing procedures, there remain a number of important differences between the RAD Boards that have the potential to lead to confusion and inconsistencies in the way hearings are conducted and determined.

96. As part of the implementation of the Lewis Reform proposals, the Act was amended to provide for the appointment of a single Registrar on agreement between the controlling bodies.<sup>44</sup> As indicated above, the IWP intended that the Registrar role would ensure procedural consistency across the codes.
97. It appears, however, that the legislative provisions creating the role addressed only administrative functions such as maintaining a register of matters heard by the RAD Boards (**the Register**), issuing summonses in the prescribed form, receiving appeals and serious offence charges and providing copies to the Chairpersons of the RAD Boards.<sup>45</sup> As a result, the Registrar lacks any statutory authority to facilitate the development of consistent procedures between the RAD Boards. There also appears to be a lack of clarity and formalisation of roles, responsibilities and processes between the Registrar and two Deputy Registrar positions and their respective controlling bodies.
98. The Registrar role itself is currently an additional function assigned to an RVL staff member who already had a role. Despite her different responsibilities, I note that the current Registrar has discharged her administrative responsibilities efficiently and effectively, performing admirably in the inaugural role.
99. To assist the incumbent in fulfilling the intentions behind the role as envisaged by the IWP, the position must be understood by the controlling bodies and RAD Boards to have a key role in facilitating and coordinating all RAD Board procedures.
100. During my review, it became apparent that control of RAD Board

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<sup>44</sup> Racing Act, Part IIIB.

<sup>45</sup> Racing Act, Section 83OF.

processes rests with three groups: the controlling bodies, through the Racing Rules and the content and structure of briefs of evidence; the Registrar and Deputy Registrars; and the RAD Board panels convened to hear matters.

101. While the Registrar and Deputy Registrars have taken steps to standardise the administrative and data collection processes within their control, I am unaware of any steps taken by the controlling bodies to standardise rules governing RAD Board processes. Responses from controlling bodies to my interim report suggest that they have not necessarily considered the extent to which Racing Rules, which they create, impact on the operation of the RAD Boards.
102. Currently, there are a number of noticeable differences in the content of the Racing Rules for HRV, GRV and RVL as they relate to the powers and functions of the RAD Boards. For example, RVL and HRV each have rules that prevent an appeal being abandoned without the approval of the RAD Board (LR 6B(5) and VLR 48(6) respectively). GRV does not have any such rule. The HRV Rules provide for the HRV RAD Board to appoint an appropriate advocate for an individual (VLR 50(4)), whereas the GRV and RVL Rules are silent on this issue. HRV has specific requirements contained in its rules relating to expert evidence (VLR 50(5)), and requires parties to circulate an expert report seven days in advance of a hearing. RVL and GRV do not have similar rules.
103. These differences in the Racing Rules governing RAD Board procedures have the potential to lead to significant differences in how hearings are conducted day-to-day by RAD Boards and limit the ability of the Chairs to develop consistent procedures.
104. There is also evidence that the interpretation of standard provisions differ between the codes. For example, each code publishes information on its website in relation to appeals and disciplinary processes but the information differs in material respects. In relation to the time limits permitted for an appeal to be lodged, all codes state that appeals must be lodged by no later than 5 pm, three days after the day on which the person



received notice of a decision, but HRV's website states specifically that these are *calendar days*.<sup>46</sup> In contrast, GRV's website states that these are *business days*.<sup>47</sup> Clearly, this difference could have an impact on whether an appeal may be heard.<sup>48</sup>

105. As indicated above, RASL is one organisation that deals with all three RAD Boards and it has expressed concern with differences in the processes of the Boards. RASL raised concerns about the slight variations in procedures for producing statements for the three RAD Boards, which, it found, created confusion and added to the complexity of the process. It appears that RASL's concerns regarding the different requirements between the codes for statements is capable of resolution through consultation between the relevant parties.
106. Given the significantly different levels of satisfaction of the controlling bodies with the RAD Board model and the number of parties having an impact on RAD Board procedures, structured discussions about the processes governing RAD Boards would lead to greater efficiencies, greater consistency and higher levels of satisfaction with the current structure.
107. I have also noted during my review that although the Registrar acts as a repository for information regarding RAD Board matters across the codes, there is no single document that sets out the procedures applied by the RAD Boards.

## Recommendations

- 4. That the three controlling bodies meet together with the Registrar to identify opportunities to improve and standardise procedures relating to RAD Board hearings, particularly as they relate to the involvement of third parties such as Racing Analytical Services Limited. Further,**

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<sup>46</sup> HRV, 'HRV Racing Appeals and Disciplinary (RAD) Board Information', HRV Website, viewed 20 June 2013 [www.hrv.org.au/hrv/index.cfm/integrity/radb-information](http://www.hrv.org.au/hrv/index.cfm/integrity/radb-information)

<sup>47</sup> GRV, 'GRV Appeals Process', GRV Website, viewed 20 June 2013 [www.grv.org.au/Portals/17/GRV\\_images/GRV%20Appeals%20Process%2028%209%2012.pdf](http://www.grv.org.au/Portals/17/GRV_images/GRV%20Appeals%20Process%2028%209%2012.pdf)

<sup>48</sup> The issue of how appeal timeframes are calculated is dealt with in more detail in paragraph 180 below.

**that such meetings should occur as required and at least every two years.**

- 5. That the controlling bodies and the Registrar develop a document setting out procedures governing RAD Board matters, which is endorsed by the RAD Board Chairs and published by the Registrar and Deputy Registrars on each controlling body’s website.**

### **Consistency of penalties applied by the RAD Boards**

108. Judge Lewis expressed concern that the penalties being imposed for offences of a similar nature vary across the codes and noted the need to ensure consistency in the penalties being applied.

109. The same concern about a lack of consistency in the penalties being applied for like offences across the various RAD Boards was also raised in a number of submissions made during the consultation phase of this review. However, other submissions expressed the strong view that the further alignment of penalties between the various RAD Boards was undesirable and that the adoption of the RAD Board model had led to the application of penalties of diminishing significance.

110. For example, RVL expressed the view that “while a desire for consistency [of penalties] has merit, it should be considered in the context of significant differences between the three codes of racing, the profile of their participant groups and the overriding need for penalties to be determined within each code’s national and international rule making framework”.<sup>49</sup>

111. While agreeing that “the development of a central database (via the common Registrar) assists decision makers to compare penalties imposed” GRV was also “mindful of the compelling need to ensure that each and every case is judged on its own merits” which, in its view, “needs to take precedence over attempts to prescriptively dictate ‘consistency of penalties’ across differing racing codes”.<sup>50</sup> GRV could also “see merit in reviewing penalties imposed in other codes and believes that the current

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<sup>49</sup> RVL, op. cit., p. 1.

<sup>50</sup> GRV, op. cit., p. 3.

system which includes a common Registrar helps to facilitate this and provides for adequate sharing of information".<sup>51</sup>

112. The Chairman of the GRV RAD Board expressed the view in his submission that the appointment of a single Registrar for the three RAD Boards had enabled sufficient centralisation of matters to facilitate information sharing amongst the Boards.<sup>52</sup>

113. The VRI submission also noted that the development of a central database via the Registrar had assisted decision makers in comparing penalties imposed by the Boards.<sup>53</sup> However, the VRI also supported implementing measures to increase the regular flow of information between the three RAD Boards, including a proposal that I convene a regular forum to facilitate information sharing.<sup>54</sup>

114. In the following section, I analyse three aspects of consistency in penalties imposed. Firstly, I examine the issue of consistency between the penalties imposed by Stewards and those imposed by the RAD Boards on appeal. Secondly, I analyse the level of consistency in decision-making between panels of any one RAD Board. Finally, I consider consistency between the three RAD Boards in respect of decisions relating to similar offences.

### ***Consistency between Stewards and RAD Boards***

115. The issue of penalties being reduced on appeal was not an issue specifically dealt with by the Lewis Report. Although that report did consider the issue of the inconsistency of penalties between codes, it did not address the issue of the degree to which penalties were being applied consistently within a code. Anecdotally, concerns have been expressed to me regarding the extent to which "discounts" on penalties may be permitted by the various RAD Boards, and whether these practices are consistent with the way in which Stewards impose penalties at first instance.

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<sup>51</sup> *ibid.*

<sup>52</sup> Submission of the Chairman, GRV RAD Board, 4 May 2011.

<sup>53</sup> Submission of the VRI, dated 1 June 2012, p. 8.

<sup>54</sup> *ibid.*, p. 9.

116. In respect of decisions, the available data indicates that the three RAD Boards are unlikely to overturn the findings of Stewards. The percentage of Stewards' decisions that were overturned on appeal for the two-year period ranged from 18 per cent for the GRV RAD Board to 23.5 per cent for both the RVL and HRV RAD Boards.
117. However, in relation to appeals regarding severity of penalty, two of the three RAD Boards are quite likely to vary the penalty imposed by the Stewards. The HRV and RVL RAD Boards were more likely than not to vary penalties; 59 per cent of appeals on penalty were successful in the thoroughbred code and 63 per cent of appeals on penalty were successful in harness racing. By contrast, the GRV RAD Board allowed only 31 per cent of appeals in respect of penalty.
118. If data is added for appeals where the decision was overturned and therefore the penalty automatically fell away, the figures for successful appeals on penalty are higher. The RVL RAD Board allowed appeals on penalty in 65.5 per cent of matters and the HRV RAD Board allowed 70 per cent of appeals on severity of penalty.
119. Significant differences between the penalties imposed by Stewards and RAD Boards for the same offence can lead to uncertainty and perceptions of arbitrariness and unfairness in the mind of persons subject to penalties. In this respect, I note that although the GRV RAD Board hears the greatest number of serious offence matters, the number of appeals from stewards' decisions lodged with the GRV RAD Board is the lowest of the three codes. In general, I consider that this uncertainty and perception could be addressed by the RAD Boards providing information regarding their decisions. Research on penalties that is available to stewards and the RAD Boards may also assist in maximizing consistency in the imposition of penalties.
120. Although the HRV and GRV RAD Boards publish a brief record of the matters heard and their outcome, reasons for a decision are usually only provided in writing when a matter proceeds to VCAT. By contrast, the Registrar attaches a transcript of the decision of the RVL RAD Board to the

published summary of the matter. I consider the approach of the RVL RAD Board is preferable as it provides the decision in the words of the presiding member of the RAD Board, rather than a summary prepared by a third person. In response to the interim report, both GRV and HRV expressed concern that a requirement to publish reasons would increase the administrative burden of managing matters, and the organisations considered it unnecessary for minor matters. The RVL RAD Board approach of publishing the transcript of the decision handed down by the Chairman of the RAD Board may reduce the administrative burden. In addition, the detail and length of the decision would vary according to the significance and complexity of a matter, with simple matters requiring only short reasons.

121. While an opportunity to request written reasons for a decision may meet the needs of a party to proceedings, such an approach fails to increase the understanding of racing participants (and stewards) more generally in relation to the nature of penalties and the circumstances in which they will be imposed. GOTBA argued that “publishing of the reasons for each decision of the RAD Board will help to improve participant education and understanding as well as provide transparency of decision making and improve consistency of decisions and sanctions”.<sup>55</sup>

## **Recommendations**

- 6. That the Office of the Racing Integrity Commissioner undertake research to support and assist the codes to develop sanction guidelines for both stewards and RAD Boards.**
- 7. That RAD Boards record their reasons for decisions and the Registrar or Deputy Registrars publish the reasons on the relevant code’s website.**

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<sup>55</sup> GOTBA, Response to Interim Report, 11 September 2013.

***Consistency of penalties applied to the most common drug offences within each code***

122. In addition to the variation between penalties imposed by Stewards and RAD Boards, there is also evidence of inconsistencies in penalties imposed for the same types of offences by RAD Board panels within each code.
123. For example, a comparison of the penalties applied to the most common drug offences suggests there is some variation in the types of sentences imposed by each RAD Board for the same offence, even where identical drugs may be involved.
124. The reasons for the variation of penalties for the same offence may be due to a number of factors, including the drug used, how it was ingested, and the effect of the drug. A range of mitigating or aggravating circumstances may also have been considered by a RAD Board in applying a particular sanction. It is therefore difficult to draw firm conclusions as to the reasons for the variation.
125. For example, during the two-year reporting period, penalties applied for breaches of AR 178 (*requiring a horse to be presented for a race free of prohibited substances*)<sup>56</sup> by the RVL RAD Board involving the drug Ibuprofen varied from a conviction and \$8,000 fine to a conviction and \$2,000 fine.
126. In general, the penalties for breaches of AR 178 ranged from a conviction and \$8,000 fine to the offence being proved, but no conviction recorded or penalty applied. Only in one case did a breach of AR 178 result in a suspension being applied (involving elevated TCO2 levels), and no disqualifications were applied by the RVL RAD Board for breaches of AR 178. In another case where a breach of AR 178 involved elevated TCO2 levels, a conviction was recorded but no penalty applied.

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<sup>56</sup> AR 178 provides that "when any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised."

127. In relation to breaches of HRV Rule AHR 190(1) (*where a horse is brought to a race and a prohibited substance is detected*),<sup>57</sup> the penalties applied by the HRV RAD Board for breaches involving the drug Aminocaproic Acid included:

- (a) conviction and fine of \$10,000;
- (b) conviction and fine of \$6,000;
- (c) conviction and suspension of 12 months (no fine imposed).

128. In relation to breaches of AHR 190(1) involving elevated TCO2 levels, the penalties applied by the HRV RAD Board ranged from a conviction and a five-year suspension, to a conviction and \$10,000 fine, and a conviction and six-month suspension with no fine. The HRV RAD Board appears to impose significant periods of suspension for the most common drug offences significantly more often than the RVL RAD Board adopts these sanctions. The HRV submission to this Review noted with dissatisfaction that the penalties imposed by the HRV RAD Board for serious offences are lower than the penalties affirmed by the RAT previously. In particular, HRV argues that the HRV RAD Board makes greater use of suspensions, which, it argues, are of little consequence to trainers in harness racing.

129. In relation to GAR 83(2) and (3) (*requiring that a greyhound be presented free of any prohibited substances*),<sup>58</sup> the penalties applied for breaches in the two-year reporting period varied substantially even where the same drug was concerned.

130. For example, convictions relating to procaine ranged from a conviction and \$4,000 fine, to a conviction and \$500 fine. Disqualifications and suspensions were also used relatively frequently by the GRV RAD Board, with 12 of the 30 breaches of GAR 83(2) resulting in some form of

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<sup>57</sup> AHR 190(1) provides that "A horse shall be presented for a race free of prohibited substances."

<sup>58</sup> GAR 83(2) provides that "the owner, trainer or person in charge of a greyhound (a) nominated to compete in an Event; (b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or (c) presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked shall present the greyhound free of any prohibited substance." GAR 83(3): "The owner, trainer or person in charge of a greyhound presented contrary to sub-rule (2) shall be guilty of an offence."

suspension or disqualification.

131. I note my recommendations for greater diversity in the composition of RAD Board panels for hearings have the potential to increase the variation in penalties between and within codes in the absence of more effective information sharing and the implementation of Recommendations 8 and 9.

132. Proposals to improve information sharing are set out below.

### ***Penalty Consistency Between Codes***

133. An analysis of the data relating to penalties imposed by the three RAD Boards supports the argument for greater information sharing between codes. A comparison of the sanctions applied by the three RAD Boards for the most common drug offences during the two-year reporting period suggests some variation across the three RAD Boards in relation to monetary penalties imposed and the use of suspensions and disqualifications as sanctions.

134. Overall, HRV tended to apply the highest fines for breaches of Rule AHR 190(1) (*where a horse is brought to a race and a prohibited substance is detected*), with the average fine imposed being approximately \$5,923. Both GRV and RVL imposed significantly lesser penalties for drug offences, with the penalty imposed by the RVL RAD Board for breaches of AR 178 being \$3,250 on average and the GRV RAD Board imposing fines of \$1,305 on average for breaches of GAR 83(2).

135. As indicated above, the RVL RAD Board rarely applied sanctions involving suspensions or disqualifications for breaches of AR 178 whereas such sanctions were commonly applied by the HRV and GRV RAD Boards for similar offences.

136. Variation in the kinds of penalties being imposed by the different codes for similar drug offences appears to be an ongoing issue. The reasons for the variation are difficult to identify by examination of the data alone.



### **Information Sharing**

137. The Register maintained by the RAD Boards' Registrar contains information regarding appeals lodged, serious offences to be heard, and also the determinations made by the RAD Boards.<sup>59</sup> It appears that the Register is currently maintained as a spreadsheet, which lists the individual matters coming before the RAD Boards.

138. Information about penalties imposed for a particular offence may be gathered by the Registrar by searching the individual proceedings relating to that offence. However, the maintenance of the Register as a spreadsheet listing the matters heard by the RAD Boards may lead to laborious search procedures, due to the need to search all offences prosecuted to obtain information about penalties applied by the RAD Boards. In my interim report, I recommended that the Register be provided in a format that is easily searchable and available to RAD Board members during hearings. In response to the interim report, RVL and HRV advised that they consider that the Register in its current form meets the needs of the RAD Boards. The RVL and HRV RAD Boards did not comment. GRV and the GRV RAD Board supported the recommendation that the Register be more accessible during hearings. The mixed responses from industry participants suggest that further consultation on this issue is necessary.

139. Judge Lewis made two recommendations to facilitate information sharing among the codes and promote greater consistency in penalties:

- (a) RAD Board members were to meet quarterly to discuss problems encountered and exchange information; and
- (b) The new appellate and disciplinary body was to use its quarterly meetings to discuss penalties imposed, with a view to acting consistently.<sup>60</sup>

140. Under the three RAD Board model, these recommendations have not yet been implemented. I have deferred convening a cross-code RAD Board

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<sup>59</sup> Further particulars of the information that is required to be kept in the Register are specified in regulation 8 of the *Racing (Racing Integrity Assurance) Regulations 2010*.

<sup>60</sup> Lewis, *op. cit.*, p. 15.

forum pending completion of this review.

141. Suggestions raised by contributors to my Review to increase consistency between the three RAD Boards also focused on information sharing and included: i) rotating RAD Board members through other RAD Boards to gain experience in relation to how other boards operate, ii) RAD Board members attending other Board hearings as observers, and iii) creating an interface between the Chairs, the Registrar and the Deputy Registrars of the Boards. While the first suggestion is inconsistent with the legislative provisions and Racing Rules governing RAD Boards, the second is feasible and the third suggestion mirrors Judge Lewis's recommendations. I note that the functions of the RAD Boards are currently limited to hearing and determining matters and there is no provision for additional administrative activities, such as attending meetings. I suggest the Minister and controlling bodies consider if and how this limitation should be addressed.

142. Judge Lewis recommended that members of the proposed single RAD Board hold quarterly meetings to discuss issues arising. The IWP suggested that the Racing Integrity Commissioner convene and participate in meetings of the three proposed RAD Boards. I adopted the IWP position in the interim report produced for this review. However, in its response to the interim report, RVL pointed out that convening such meetings may result in a conflict of interest on my part if I am also assigned board of inquiry powers (currently before the Victorian Parliament). RVL appears to be suggesting a conflict of interest could arise if I was required to appear before a RAD Board hearing to give evidence as a result of an investigation I had undertaken.<sup>61</sup> I accept RVL's point and suggest the Registrar convenes the proposed meetings. My office could support the meetings, but not participate, by providing statistical material to underpin discussions.

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<sup>61</sup> Justice Legislation Amendment (Miscellaneous) Bill 2013, section 41.

## **Recommendations**

- 8. That the Registrar convenes meetings of the three Chairs and/or Deputy Chairs of the RAD Boards as required and at least annually. Such meetings should be used to discuss problems encountered, exchange information, review trends, discuss issues and review penalties imposed. The Racing Integrity Commissioner should contribute to the meetings by making available statistical data and analysis regarding the activities of the RAD Boards and VCAT.**
  
- 9. That the usefulness of the Register be improved by:**
  - (a) the Registrar consulting with the Chairs of the three RAD Boards to determine if and how the Register can be enhanced to increase its accessibility for RAD Board members during hearings and improve its searchability for specific types of information; and**
  
  - (b) the controlling bodies support the Registrar and Deputy Registrars by ensuring the RAD Boards have live access to the Register during hearings.**

## **Appeal Thresholds**

143. Prior to the introduction of the Lewis Reforms, appeal thresholds were set at \$250 for fines for the RVL RAD Board and the HRV equivalent, and the GRV appeal threshold was \$500. That is, lesser fines could not be appealed to the appellate bodies that existed at the time.
  
144. As part of the Lewis Reforms, GRV's appeal threshold was reduced to fines of more than \$250 to be consistent with the RVL RAD Board.
  
145. GRV has indicated a preference for the threshold to be increased to the same limit as applied prior to the Racing Act reforms. GRV is of the view that the \$250 threshold is too low and "opens up the potential for racing's equivalent of 'traffic offences' to clog up the RAD [Board] system".<sup>62</sup> This

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<sup>62</sup> GRV, *op. cit.*, p. 4.

position has also been repeated by GRV as part of the joint VRI submission.<sup>63</sup>

146. According to the recorded data, the GRV RAD Board hears the lowest number of appeals of the three codes. In the two-year reporting period, I noted only one matter where a person would have been prevented from appealing if the appeal threshold for a fine had been more than \$500, rather than more than \$250. Therefore, I do not see any demonstrable case for raising the appeal threshold applying to appeals to the GRV RAD Board.
147. GRV also suggested that the jurisdiction of the GRV RAD Board to hear appeals concerning "greyhound offences" (that is, offences which apply directly to the greyhound, rather than to the trainer or owner) should be clarified in s 83C of the Act.<sup>64</sup>
148. GRV indicated that it has received advice from the Department of Justice that appeals in relation to such matters are permissible but sought certainty on the issue through legislative amendment. Given the advice of the Department of Justice and the fact that appeals in relation to greyhound offences appear to have been proceeding at the RAD Board level without dispute, I do not consider that the issue warrants legislative change.

### **Other Issues Raised by Industry Participants**

149. The preceding sections address the extent to which Judge Lewis's recommendations have been implemented, their effectiveness and further changes that are required. I consider it important to recognise, however, that while most input from industry participants regarding the RAD Boards related to structural issues and administrative processes, there is no universal view that the RAD Boards are an improvement on the previous disciplinary system.
150. HRV expressed the view that "[t]he Racing Appeals and Disciplinary Board ... model in its current form is a less efficient and more costly method of

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<sup>63</sup> VRI, op. cit., p. 11.

<sup>64</sup> GRV, op. cit., p. 4.

effectively managing the integrity functions of the harness racing industry” than the previous system. HRV also states that “[t]he establishment of the RADB model has led to the application of penalties of diminishing significance and penalties which are inconsistent with those that have previously received judicial endorsement by the Racing Appeals Tribunal”.<sup>65</sup>

151. In its first submission to the consultation process, HRV raised a number of concerns about the serious offence jurisdiction of the HRV RAD Board, particularly with respect to delays and costs. In HRV's view, the definition of serious offences in the HRV Rules (drafted to be consistent with the RVL Rules) had led to "nonsensical outcomes where many times the cost to convene the HRV RAD Board for a hearing is far greater than the penalty being imposed."<sup>66</sup> HRV expressed serious concern that stewards are being forced to make commercial decisions when assessing the merits of issuing charges.

152. The concerns expressed by HRV are significant, as it is clearly inappropriate from an integrity perspective for stewards to be influenced by the cost of prosecuting an offence when evaluating whether or not to lay charges for breaches of Racing Rules. Such costs should not form any part of an assessment made by stewards, and their assessment should depend entirely on the conduct under consideration and the applicable Racing Rules. In many situations (whether in the context of disciplinary tribunals, civil penalties or the criminal law), the cost of prosecuting a matter may exceed the amount raised by any fine imposed. I note that the data regarding costs indicates that the cost of running a HRV RAD Board hearing is not excessive. However, I acknowledge that these figures do not factor in the cost of the time of stewards in preparing and presenting briefs for hearing, which HRV states has a significant impact on the capacity of the integrity department.<sup>67</sup>

153. In its submission to the review, RASL commented that “[t]he RAD Board

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<sup>65</sup> HRV, op. cit., cover letter.

<sup>66</sup> *ibid.*, p. 3.

<sup>67</sup> *ibid.*

system as a whole is more complex than its predecessor, the stewards' inquiry. It is far more formal and allows for legal representation of trainers. This has inevitably led to greatly increased pre-hearing preparation for RASL staff particularly with respect to the production of statements and conferences with the Stewards and their legal counsel".<sup>68</sup>

154. RASL raised concerns about the slight variations in procedures in producing statements for the three RAD Boards, which, it said, created confusion and added to the complexity of the process. RASL concluded that "[i]t is therefore possible that a single appellate body having a common procedure for all drug-related hearings would provide a simpler and more straightforward approach which would save RASL time and effort and reduce the risk of error".<sup>69</sup>

155. By contrast, GRV considered that the GRV RAD Board has "been able to provide a relatively expedient and economical appeal and disciplinary system to the Victorian greyhound racing industry... associated costs are currently incurred according to the case load undertaken, without the need for a heavy financial burden committed to bureaucracy [which would occur with a single appeal body]".<sup>70</sup>

156. The statistics demonstrate significant variance in costs between the three RAD Boards over the two-year reporting period. While HRV remains concerned about the costs associated with RAD Board hearings, the data on costs indicate that the most significant costs fall on the RVL RAD Board. The average cost per hearing of the RVL RAD Board in the first reporting period was \$12,322. The average cost per hearing was \$5,222 in the second reporting period. In comparison, average costs for the HRV and GRV RAD Boards per hearing were significantly less, with the HRV RAD Board costing \$1,498 per hearing in the first year, and \$1,563 in the second year. The GRV RAD Board averaged \$1,048 per hearing in the first year, and \$1,022 in the second year of the reporting period.

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<sup>68</sup> RASL, op. cit., p. 1.

<sup>69</sup> *ibid.*

<sup>70</sup> GRV, op. cit., p. 2.

157. The variance in costs may be explained in part by the significantly higher amount of spending on legal and veterinary assistance by the RVL RAD Board during the 2010–2011 period.
158. The statistics demonstrate that legal or other representation was used in RVL RAD Board proceedings relating to serious offences in 47 per cent of cases, and in 68 per cent of appeal cases. Representation in appeal cases was predominantly provided by the Victorian Jockeys' Association. Before the HRV RAD Board, 62 per cent of serious offence matters and 38 per cent of appeals involved legal or other representation. The figures were somewhat lower again before the GRV RAD Board, with 24 per cent of serious offences and 28 per cent of appeals involving legal or other representation of the individual concerned. Details of costs are contained in Part 4 of the report.
159. I do not consider that the concerns of HRV and RASL regarding costs warrant a structural change to the system at this time. Rather than highlighting a need for a change to the RAD Boards' jurisdiction to hear and determine serious offences, the suggestion raised by HRV that stewards are being forced to make commercial decisions when assessing the merits of issuing charges, highlights the importance of stewards being separated from the day-to-day running costs of RAD Boards, and for Boards to be properly funded. The concerns of RASL regarding inconsistencies between the procedures adopted by RAD Boards could be addressed by implementing the recommendations I have made above.

### ***Time Required to Hear Serious Offence Charges***

160. An associated issue raised by HRV in its first submission was the time required by the HRV RAD Board to hear serious offence matters, which HRV indicated had extended to 244.9 days, significantly in excess to the period of time that the HRV stewards had taken to hear equivalent serious offences.<sup>71</sup>
161. The recorded data available to me indicates that in the period from March

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<sup>71</sup> HRV, *op. cit.*, p. 2.

2010 to April 2011 (the period covered by the HRV submission), the time between the date of the charge and the date the finalisation of matters averaged 54 business days.<sup>72</sup> The median time between charge and determination was 25.5 business days. Five matters took in excess of 100 days to conclude. The average time for the remainder of matters to be heard was 24 business days.

162. The delay in hearing serious offence charges was also raised by RASL in its submission to the consultation process. RASL considered that the delays in hearing drug matters was "perhaps the most disappointing aspect" of the RAD Boards.<sup>73</sup>

163. GOTBA also expressed concern that some matters were taking too long to be heard. It cited cases taking four to five months to reach hearing and argued that two months is a more appropriate timeframe.<sup>74</sup>

164. The recorded data relating to the hearing of serious offence matters does not appear to support the concerns expressed by HRV and GOTBA. In the two-year reporting period, serious offence matters before the HRV RAD Board required an average time of 48 business days to be fully determined, and on average were determined in less than this time by the RVL and GRV RAD Boards (27 and 30 business days respectively). There also appeared to be opportunities for the HRV RAD Board to use its Deputy Chairman more extensively. However, generally the time taken for a RAD Board to hear and determine serious offence matters appears to be reasonable.

165. For RVL and GRV drug matters, the average time taken between charge and determination by their respective RAD Boards (33 and 28 business days respectively) is comparable with the averages for all matters. For

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<sup>72</sup> The calculation provided by HRV may relate to calendar days, whereas my figure calculates business days only. The HRV figure may also relate to the time between the incident giving rise to the charges and the determination by the RAD Board, rather than the charge date to determination date measure that I have adopted. I consider the charge to determination measure more appropriate as events prior to charges being laid are beyond the control of the Registrar and RAD Boards. For further details of the statistical analysis, see below at Part 4 of the Report.

<sup>73</sup> RASL, *op. cit.*, p. 1.

<sup>74</sup> GOTBA, *op. cit.*



HRV matters, the average time from charge to determination for drug matters in the two-year reporting period was 83 business days, which is significantly longer than the average for all matters. The extended average timeframe arises largely because the five protracted harness racing matters referred to above were all drug related. Although some lengthy hearings took place in drug offence matters, it is not clear that RAD Board procedures contributed to the delay in hearing matters.

166. I note that a delay in hearing serious offence matters was not a matter specifically raised by the VRI in the second round of submissions to the consultation process.

### ***Time Permitted to Lodge an Appeal***

167. As part of the Lewis Report recommendations, the time permitted for the lodgement of an appeal was varied as follows:

- (a) The time permitted for a GRV appeal to be lodged decreased from seven days to three days;<sup>75</sup> and
- (b) The time permitted for HRV and RVL appeals to be lodged was increased from two days to three days.<sup>76</sup>

168. All appeals must be lodged by 5 pm on the third day after the day on which the appellant receives notice of the decision.<sup>77</sup> Where an appeal is sought to be commenced after the expiration of the period specified in the Rules/the Act, a RAD Board has the power to grant an applicant leave to appeal if it is of the opinion that an adequate explanation has been given and it would be unjust to refuse to grant leave.<sup>78</sup>

169. RVL indicated in its first submission to the consultation process that although it had previously supported the adoption of consistent periods for the lodgement of appeals, it now considered that short appeal times were necessary to restrict a participant's capacity to manipulate the system. The

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<sup>75</sup> See s 83J(2) of the Racing Act.

<sup>76</sup> See s 50J(2) of the Racing Act (HRV); LR 6B(1) (RVL).

<sup>77</sup> As I have noted above, there are ongoing differences in how the three codes understand and apply the time limits.

<sup>78</sup> See LR 6B(6), ss 50L and 83L of the Racing Act.

concern is that the subject of charges will seek a stay of a suspension or disqualification from the stewards in circumstances where they do not intend to lodge an appeal. RVL commented that:

The extension of the appeal period from two to three days may have exacerbated this undesirable practice, but at this stage the RAD Board is continuing to monitor behaviour and is keeping the matter under notice.<sup>79</sup>

170. In the second round of submissions, the issue of the exploitation of appeal times to gain the benefit of a stay of a suspension was raised in the VRI's submission.<sup>80</sup> As noted in the VRI submission, the three-day appeal period could be used to permit a jockey suspended on the Tuesday Melbourne Cup Day to continue to ride in races on Oaks day (the Thursday following Cup day), even where there was no genuine basis for an appeal.<sup>81</sup> The lodging of an appeal on the Friday of the Spring Racing Carnival could also permit a jockey to ride in the Saturday Emirates Stakes Day (unless the RAD Board or VCAT, as applicable, was urgently convened to hear the appeal).
171. The VRI therefore requested that, given the uniqueness of the four main race days of the Spring Racing Carnival at Flemington (known as the Melbourne Cup Carnival), the period for lodgement of appeals to the RVL RAD Board should be reduced from three days to two days, to minimise the opportunities for exploiting or manipulating the appeal system. The VJA also indicated in its submission to the consultation process that it does not oppose the reversion to a two-day appeal limit.
172. The concerns expressed by RVL in relation to the permitted appeal times during the Melbourne Cup Carnival appear to relate to the potential for a jockey to seek a stay on a penalty imposed by stewards on the basis that he or she is considering an appeal when in fact he or she has no intention of appealing the matter. The jockey would be advantaged by being able to participate in other feature races during those three days.

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<sup>79</sup> RVL, *op. cit.*, p. 3.

<sup>80</sup> Supplementary comments from the RVL CEO, 29 February 2012; and VRI, *op. cit.*, pp. 9 - 10.

<sup>81</sup> VRI, *op. cit.*, p. 9.

173. The crux therefore is the time limit permitted for the jockey to lodge an appeal.
174. The three days allows jockeys to consider their options and it is appropriate for stewards to grant stays to permit such considerations as they can, and do, go to the livelihood and reputation of the jockey. When it comes to the Melbourne Cup Carnival however, the three-day period takes on a greater significance because of the four major race days over an eight-day period.
175. However, while I appreciate the concerns of RVL, I do not consider that reducing the appeal timeframe by a day will significantly reduce the likelihood of the RAD process being manipulated. A restricted time period may encourage a jockey to lodge an appeal to obtain a stay regardless of whether he or she intends to pursue the matter.
176. As it is considered fair for industry participants to have three days to consider their options and lodge an appeal for most of the year, it is not clear why the approach to fairness should not apply to the full year. It is also likely that the change would produce confusion amongst industry participants.
177. To date, there are insufficient instances to justify changing the rules to create a different approach in one code to address an eight-day period of the year. An analysis of the specific circumstances which would need to exist if a shortened appeal period was to be effective suggests that the benefit would be more theoretical than real.
178. Separately, concerns were raised by GRV in its first submission to the consultation process, and also as part of the joint VRI submission, in relation to the timeframes for the lodgement of appeals to the GRV RAD Board.<sup>82</sup> GRV expressed a preference that appeal times be expressed as three working days, in consideration of the fact that many greyhound-racing participants reside in isolated regional areas, and that much racing occurs on weekends.

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<sup>82</sup> GRV, op. cit., p.4; VRI, op. cit., p. 11.

179. No reference was made by GRV to specific problems occasioned by the three-day appeal period. The GRV RAD Board has the power to extend the appeal timeframe, as do the RVL and HRV RAD Boards. It is unclear why this power to grant leave to appeal could not be used to overcome any issues faced by appellants, where there is valid reason for lateness. No variation to the time for lodging appeals to the GRV RAD Board appears warranted.
180. Sections 50J and 83J of the Act set out the appeal timeframes for harness racing and greyhound racing respectively. As the appeal timeframes are contained in statute, their interpretation is subject to the *Interpretation of Legislation Act 1984*. Section 44(3) of the Interpretation of Legislation Act stipulates that if the time limited by legislation for the doing of any act expires on a Saturday, Sunday or a day that is a public holiday in the place where the act is to be done, then the timeframe expires on the next day that is not a Saturday, Sunday or public holiday. This means that weekend days and public holidays count in the three-day period but the appeal period cannot end on a weekend or public holiday. The appeal period would end on the next business day. For example, if a person is suspended on a Wednesday, the appeal period would expire on the following Monday. The appeal period for a person suspended on a Friday would also expire on the following Monday. Responses to the interim report suggest there is some confusion about this issue in the industry and the question has been raised with my office in the past. In the interests of clarity, information about the application of time limits on appeal periods should be advertised widely.
181. The appeal timeframes for RVL are set by the RVL Rules and therefore are not subject to the Interpretation of Legislation Act. The Registrar has indicated that RVL expects affected participants to lodge appeals by the third calendar day after a penalty is imposed, even if the third day is a weekend or public holiday. It would be preferable if the appeal timeframes of the codes were consistent and as HRV and GRV have no flexibility on the issue, I suggest RVL consider the matter further.

182. No specific issues were raised by HRV in its first submission or in the VRI submission regarding the applicable time limits for the making of appeals to the HRV RAD Board. However, six appeals were lodged out of time to the HRV RAD Board in the 2011/12 reporting period. This is a significant number, and should be contrasted with the GRV and RVL RAD Boards, where no appeals were rejected on the basis of being lodged out of time. The circumstances of the six appeals lodged out of time to the HRV RAD Board are not apparent from the data.

183. It's reasonable to expect however, that this issue would be addressed by the provision of clear information to all persons sanctioned by the stewards regarding the applicable appeal period.

### **Recommendation**

**10. That the procedural document referred to in Recommendation 5 stipulates that the period for lodging appeals from stewards' decisions relates to calendar days, not business days. This information should be contained in the prescribed forms issued by the stewards when sanctions are imposed and in a conspicuous place on each code's website. It should be made clear to HRV and GRV participants that if an appeal period expires on a Saturday, Sunday or public holiday, the appeal time is extended to expire on the next business day.**

### ***Appeal Fees***

184. Prior to the Lewis reforms, appeal fees were applied by HRV and GRV. GRV imposed a \$150 non-refundable fee for all appeals lodged. HRV required appeal deposits of between \$400 - \$600, which could be partly refunded. The RVL RAD Board did not impose any kind of appeal deposit or administrative fee.

185. Consistent with the practice of the RVL RAD Board, no appeal fees or deposits have been applied to the newly (2010) established HRV and GRV RAD Boards under the Act.

186. During the consultation process, the issue of the reintroduction of appeal deposits was raised by HRV, which suggested that the removal of costs associated with the making of an appeal had resulted in more appeals being lodged, and also more appeals being withdrawn. HRV considered that appeals may be lodged for convenience and to allow drivers to compete in Group 1 races, and that the use of an appeal deposit of between \$250 - \$300 was warranted to reduce the likelihood of frivolous appeals.<sup>83</sup>
187. As part of the joint VRI submission, HRV again expressed the view that "a re-introduction of an appeal deposit would go some way to alleviating inappropriate appeals," making reference to appeals withdrawn and lodged outside of the allowed timeframe.<sup>84</sup> HRV concluded that "the system as it currently stands can be misused."<sup>85</sup> HRV proposed the reintroduction of a \$400 appeal deposit, which may be fully or partly refunded at the discretion of the HRV RAD Board.
188. GRV was also of the view that the requirement to lodge an appeal deposit would provide "some safeguard against the possibilities of vexatious or frivolous appeals".<sup>86</sup>
189. Appeal deposits are commonly used in racing jurisdictions around Australia, and such deposits (or other administrative fees) may be an effective mechanism to ensure that appeals that are lodged are fully thought through by the appellant, and not lodged in order to gain the benefit solely of a stay of a suspension or other penalty.
190. A key consideration is the right of an aggrieved party to have a stewards' decision reviewed. That right should not be removed because of an inability to pay a prescribed amount.
191. Sections 50N(2) and 83N(2) of the Act and Rule LR6D(3) of the RVL Rules provide RAD Boards with the authority to dismiss without hearing appeals

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<sup>83</sup> HRV, op. cit., p. 3.

<sup>84</sup> VRI, op. cit., p. 10.

<sup>85</sup> *ibid.*

<sup>86</sup> GRV, op. cit., p. 5.

that are frivolous, vexatious or lacking in substance. This mechanism could be used in some cases to deal with matters that clearly lack merit.

### ***Legal or Other Representation***

192. The VRI submission to this Review argued that the right of parties to representation in GRV and HRV RAD Board matters should be subject to the discretion of the Board Chairperson. The submission contrasts the situation that exists for the HRV and GRV RAD Boards with the RVL RAD Board, which, it states, is “empowered to control proceedings by granting leave for representation or if circumstances require, refusing or withdrawing that leave”.<sup>87</sup>

193. Having examined the provisions governing the three RAD Boards, I am surprised that the interpretations of the right to representation provisions differ so significantly between the HRV and GRV RAD Boards on the one hand and the RVL RAD Board on the other. Each RAD Board has a provision stating that it can generally regulate its own procedure, subject to the rules of natural justice (HRV and GRV RAD Boards) or procedural fairness (RVL RAD Board).<sup>88</sup> The Act and RVL Rules then stipulate that there is a right to representation.

194. The phraseology of the provisions differs slightly. In respect of GRV and HRV, the Act states that “[a] party to a proceeding before the [GRV or HRV] Racing Appeals and Disciplinary Board is entitled to be represented by an Australian lawyer or any other person” (ss. 50N(3) and 83N(3)). The RVL Rules state “[a] party to a proceeding is entitled to be represented at the hearing of the matter by a legal practitioner or other person” (LR 6D(4)). While not explicit on the point, the VRI submission seems to suggest that in practice a distinction is drawn between the right to be represented by “any other person” and the right to be represented by an “other person”.

195. The VRI submission requests that the rules relating to the HRV and GRV

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<sup>87</sup> VRI, op. cit., p.11.

<sup>88</sup> Racing Act, ss 50N(1) and 83N(1); RVL Rules LR 6D(1)

RAD Boards be made consistent with the rules applying to the RVL RAD Board, such that the Chair or Deputy Chair of the RAD Board would have the discretion to grant leave for a person to be represented. The request for an overriding control exercisable by the RAD Board Chairperson is based on concerns that unqualified persons, or even disqualified persons, may represent parties appearing before RAD Board hearings, and that such intervention may be disruptive to the proceedings.

196. GRV also expressed concern with respect to the entitlement of parties to be represented by 'any other person'. GRV considered that the Chairman should have some discretion regarding whether a person is suitable to represent a person appearing before the RAD Board.<sup>89</sup>

197. As a general principle, a person's ability to seek and receive legal advice or other support when appearing before a RAD Board is an essential right that is relevant to ensuring that the highest standards of natural justice are afforded to that person.

198. In some limited circumstances however, disruption to proceedings may occur if a person not suitably qualified or experienced represents an individual. In such circumstances, I consider it appropriate that the presiding member have the power to control the Board's proceedings, and be able to exercise that power in order to remove any individual who conducts him or herself in an inappropriate fashion. In my interim report, I recommended that the Racing Rules be amended to extend the authority of RAD Boards in this area. Stakeholders responding to the interim report expressed differing views on the issue; some considered current provisions sufficient and others supported an extension of powers. There was concern from some parties that the exercise of such a power may result in claims of denial of natural justice. Overall, I think the existing broad powers in the Act and the Racing Rules for RAD Boards to regulate their own procedures are sufficient and could be used more extensively if required. In extreme cases, contempt provisions may be used to manage proceedings for greyhound and harness racing matters.

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<sup>89</sup> GRV, *op. cit.*, p. 5.



## **PART 3 – VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

199. A key change to the appeal and disciplinary model in the VRI was made in 2010 as a result of the recommendations of Judge Gordon Lewis in his 2008 review of integrity assurance in the racing industry. The introduction of Part IIIB of the Act permitted VCAT to review decisions made by the three RAD Boards.<sup>90</sup> This change was accompanied by the abolition of the Racing Appeals Tribunal (RAT), an industry body that had previously been established under the Act to hear such appeals.

200. In his Report, Judge Lewis indicated that his key concerns with the role of the former RAT included:

- (a) The RAT being constituted by County Court judges, which drew these judges away from their judicial duties and eroded the capacity of the County Court; and
- (b) Delays in fixing RAT matters due to the Court commitments of the judges, with an average time to hear matters of 40 days, often leading to a stay being granted to the appellant.<sup>91</sup>

201. Although the primary concerns of Judge Lewis in relation to the use of the RAT were linked to administrative and resourcing issues, Judge Lewis also indicated more generally that his recommendations were driven by the importance of ensuring that integrity issues are pursued to the appropriate levels of governance; and in the interest of developing an integrity assurance structure and culture within the VRI that was fully transparent and accountable.

202. In Judge Lewis's view, given VCAT was available to hear administrative reviews, it was appropriate that the jurisdiction to review RAD Board decisions be assigned to VCAT, which would also complement VCAT's appellate jurisdiction concerning bookmakers and racing occupational licences.

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<sup>90</sup> Racing Act, s 83OH. An application must be made within 28 days of a decision being made, or reasons for the decision being given, s 83OI Racing Act.

<sup>91</sup> Lewis, *op. cit.*, pp. 39 - 40.

203. In the two-year reporting period examined by this review, a total of 32 appeals from the decisions made by the RVL, HRV and GRV RAD Boards were lodged with VCAT. Altogether, five appeals were withdrawn by the applicant, and a further four applications for appeal were rejected by VCAT.<sup>92</sup>
204. In the first year of VCAT's jurisdiction, 50 per cent of the appeals lodged were from decisions of the RVL RAD Board, 25 per cent of the decisions concerned the HRV RAD Board, and a further 25 per cent were lodged from decisions of the GRV RAD Board.
205. In the second year of VCAT's jurisdiction, 54 per cent of the appeals lodged were from decisions of the HRV RAD Board, 21 per cent were lodged from the RVL RAD Board, and 16.5 per cent were lodged from decisions of the GRV RAD Board. HRV also appealed to VCAT on two occasions in relation to the decision handed down by the HRV RAD Board in relation to two racing industry participants (8.5 per cent of all appeals lodged).
206. Of the 23 appeals that were lodged during the two-year reporting period and fully determined by VCAT, the average time for these matters to be determined was 22 weeks.<sup>93</sup> Twenty matters were heard and determined by a single member, while a further three were heard and determined by a panel.
207. Given the involvement of retired Judges Nixon and Dyett in the former RAT and their role as members of VCAT, it appears that only on two occasions in the reporting period (8.5 per cent of cases) was the review of a decision made by a RAD Board heard and determined by VCAT without the involvement of a former RAT member.

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<sup>92</sup> The basis for these rejections being made by the Principal Registrar of the Tribunal or a VCAT member included that VCAT had no jurisdiction to hear the matters (as the decisions did not relate to the HRV RAD Board or to occupational racing licences) or that the application was made out of time.

<sup>93</sup> This figure excludes the nine matters that were rejected or withdrawn in the two-year reporting period.

## **Industry Views on VCAT's Management of Racing Matters**

208. During the consultation process, personal and organisational views from stakeholders were received as to the effectiveness of the operation of VCAT in relation to appeals. While acknowledging that the system was still new, there was general industry concern about the appropriateness of VCAT as an appeal body for the racing industry. By contrast, representatives of VCAT indicated that, with some exceptions, racing matters were being dealt with effectively.

209. There were a number of specific concerns raised by the controlling bodies and others about the operation of VCAT in relation to racing matters. These issues included timeliness, member expertise, administrative efficiency, and jurisdiction. Reference was also made to increased costs arising from more extended proceedings.

### ***Time Required to Hear Matters at VCAT***

210. HRV in particular was very critical of VCAT's review jurisdiction. One of its key concerns was the increase in time required for VCAT to hear matters as compared to the RAT.

211. The VRI submission stated that the average time for a HRV RAD Board decision (over the two-year reporting period) to be reviewed by VCAT was 150 days.<sup>94</sup> The VRI further stated, "considering that the VCAT is performing exactly the same role as the former Racing Appeals Tribunal and the vast majority of VCAT cases are being heard by Judge John Nixon (former RAT Chairman), the only difference between the two bodies is the VCAT system itself. The difference is the cause of 189% increase in the hearing time since the change from RAT to VCAT".<sup>95</sup>

212. The issues raised in stakeholder submissions received during the review regarding the time required by VCAT to hear matters are supported by statistical data collated by VCAT. This data indicates that in relation to harness racing matters:

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<sup>94</sup> VRI, op. cit., p. 13.

<sup>95</sup> *ibid.*, p. 14.

- (a) in the first year of VCAT's operation, the two HRV RAD Board appeals required one week and 37 weeks to be finalised respectively;
- (b) in the second year of VCAT's jurisdiction, there was a tripling in the number of harness racing appeals coming before VCAT. Around half of these matters took a significant amount of time to be finalised by VCAT. On average, the matters required approximately 24.4 weeks for finalisation.

213. However, a group of four applications made to VCAT from decisions of the HRV RAD Board was particularly problematic.<sup>96</sup>

214. Information provided by the VRI during the consultation process indicated that these matters had a significant number of hearing dates vacated, resulting in the matters scheduled for hearing in 13 December 2011 actually being completed on 18 May 2012.

215. The matters also involved an application by one party for VCAT to be reconstituted, and non-compliance of an applicant with VCAT orders. VCAT data indicates that these matters took an average of two months between the first application being made and a first directions hearing being called, and in total required 48 weeks to be fully heard and determined.

216. The VRI submission also provided a number of other examples of circumstances that contributed to extended time delays in the hearing of harness racing matters before VCAT, including:

- (a) directions hearings consistently being held before different VCAT members;
- (b) the legal representatives of applicants failing to appear;
- (c) lack of information being provided to HRV regarding stay applications;
- (d) hearing dates failing to run for full days due to applicants not complying with directions regarding witnesses;

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<sup>96</sup> See VCAT applications B164/2011 (*Walters v HRV RAD Board*); B165/2011 (*Mifsud v HRV RAD Board*); B171/2011 (*HRV Stewards v Mifsud*); and B172/2011 (*HRV Stewards v Walters*).

- (e) the failure of applicants to comply with VCAT orders regarding the provision of materials and submissions;
- (f) VCAT being unable to locate relevant documents at directions hearings;
- (g) a reluctance of VCAT members at directions hearings to set timetables for the hearing of matters expeditiously or to dispense with "standard" orders regarding the filing of statements and documents in reply; and
- (h) the failure of VCAT to advise HRV of rescheduled hearing dates.<sup>97</sup>

217. In contrast to the HRV issues listed above, the VRI acknowledged that VCAT "proved responsive to particularly urgent and high profile matters that arose during [the 2011] Spring Racing Carnival in respect to jockeys Craig Williams and Nash Rawiller".<sup>98</sup>

218. Of the four GRV matters that were lodged in the second year of VCAT's operation, one of these matters was rejected, one was withdrawn and one was determined nine weeks after lodgement. The final matter dealt with the jurisdictional issue of whether VCAT can hear matters relating to 'animal offences'.

219. In its submission, the VRI argues that the serious time delays in the hearing of HRV matters warrants "moving away from the 'one size fits all' VCAT model and identifying a new model that delivers a process that is proportionate to the matter at hand and responsive to the needs of the racing industry."<sup>99</sup>

220. The former President of VCAT commented that "the development of administrative procedures, including standard directions for parties and telephone direction hearings has enabled the Tribunal to hear stay applications promptly and dispose of the substantive case in a timely and cost effective manner". He noted that "[n]ine cases were lodged in the period 1 March 2010 to 28 February 2011, of which seven cases were

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<sup>97</sup> VRI, op. cit., Appendix 1.

<sup>98</sup> *ibid.*, p.14.

<sup>99</sup> *ibid.*, Executive Summary, p. i.

disposed of within 16 weeks of lodgement”.<sup>100</sup>

221. He further stated that this speed for the disposal of matters was "well within the performance standard of 25 weeks set by the Tribunal for disposal of cases."<sup>101</sup>

222. The response of the former Acting President of VCAT during the second round of consultations acknowledged some issues with individual matters but argued that overall matters were being dealt with in a timely fashion. The former Acting President observed that, “[t]here have been some instances found of adjournments or delay, and these seem to be particularly in relation to harness racing matters”. He observed that “[t]he cause of this would appear to be multi-factorial”. The Acting President noted that there appeared to be some instances of "consent adjournments, failure to lodge documents, absence of witnesses or representatives and the like.” The feedback further states, “VCAT will be doing its best to improve its performance and reduce delay”.<sup>102</sup>

***Consistency of VCAT panel members hearing appeals and members’ knowledge and understanding of the racing industry***

223. The former President of VCAT noted that VCAT has taken steps to obtain expertise in racing matters by appointing three former County Court Judges (retired), who had experience in appellate and disciplinary proceedings in the former Racing Appeals Tribunal, as Senior Session Members to hear racing matters.<sup>103</sup>

224. While a number of submissions indicated support for the involvement and expertise of the former RAT members who had been appointed to VCAT to hear racing matters, concerns have also been expressed at the lack of development of VCAT's capacity on the whole to hear racing matters and an over reliance on former RAT members, which is unsustainable in the long term.

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<sup>100</sup> Submission of the President, VCAT, 5 May 2011, p. 2.

<sup>101</sup> *ibid.*

<sup>102</sup> Submission of the Acting President, VCAT, 23 May 2012.

<sup>103</sup> VCAT, 2011, *op. cit.*, p. 1

225. Three RVL RAD Board hearings became the subject of VCAT appeals between 1 March 2010 and 28 February 2011. RVL observed that “[t]he VCAT membership for each of the hearings included highly respected former Racing Appeals Tribunal Chairman, Judge John Nixon” and commented that “the continuing presence of VCAT members of this calibre and specialist racing knowledge is essential to ensure that the rules of racing and the associated integrity assurance systems are administered effectively and fairly”.<sup>104</sup>
226. GRV “strongly advocate[d] that VCAT develop an adequate co-ordination and administration structure to properly facilitate racing cases, and also recruit sufficient ‘racing knowledge’ of its membership to deal with the peculiarities of racing cases”.<sup>105</sup> GRV noted that some judges from the former Racing Appeals Tribunal had been appointed to VCAT for this purpose. GRV applauded this development and suggested that a succession plan for these members should form part of VCAT’s approach to its racing jurisdiction in the future.
227. RASL feedback noted that when VCAT is constituted by members who have not previously sat on the RAT, these proceedings tended to be more protracted.<sup>106</sup>
228. The former President of VCAT indicated in the first submission during the consultation process that, following the conferral of jurisdiction to review the decisions of the three RAD Boards, VCAT had constituted a number of panels of three members to hear racing matters, with the express purpose of developing VCAT’s expertise in racing matters.
229. However, of the four non-RAT members who sat on these matters, only one has proceeded to hear any further racing matters - and this occurred only on a single occasion during the reporting period.
230. In addition to the reliance on former County Court Judge Nixon to hear RAD Board appeals at VCAT, some reliance continues to be placed by

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<sup>104</sup> RVL, op. cit., p. 2.

<sup>105</sup> GRV, op. cit., p. 3.

<sup>106</sup> RASL, op. cit., p.2.

VCAT on the use of current County Court Judges to hear RAD Board matters. This indicates that one of Judge Lewis's concerns regarding the appropriate use of the County Court's resources may not have not been addressed despite the transfer of appeals to VCAT.

231. I consider it essential that VCAT develop a pool of members who are experienced and available to hear RAD Board appeals.

### ***Administrative Efficiency***

232. The first HRV submission and the subsequent VRI submission also point to serious concerns in relation to VCAT's administrative efficiency, which impact on time delays in the hearing of matters, inconvenience and cost burdens, not only on applicants but also the racing controlling bodies involved in VCAT reviews. Examples submitted include:

- (a) Poor Administration: loss of files and materials by VCAT; sending incorrect orders and materials to parties; failure by VCAT to respond to correspondence; and failures to communicate information, including that relating to scheduled hearings, in a timely manner;
- (b) Inefficient use of Directions Hearings, including hearings being automatically called when there are no significant issues for direction; inflexibility in the timetabling of directions hearings (including reluctance to schedule matters in an expedient fashion); directions hearings being called before a variety of VCAT members, including those having limited racing knowledge; and material issues not being dealt with fully at directions hearings;
- (c) Lack of enforcement of VCAT Orders and Directions, including a number of instances of failures by applicants to comply with VCAT orders and directions without serious consequences.

### ***Jurisdiction***

233. A number of racing industry stakeholders raised concerns in relation to the appropriate jurisdiction for VCAT or an equivalent appellate body.

234. The VRI submission raised several issues associated with the jurisdiction



of VCAT. Firstly, it argues that it is inappropriate for VCAT to hear minor matters. The submission states that “[d]ue to the legislative framework and policies in operation at the time, no matters involving fines of less than \$250 or suspensions of less than a month were appealed to the RAT during the two year period from 1 March 2008 until 28 February 2010. It was only possible to appeal such penalties if the RAT deemed it was in the public interest to do so.”<sup>107</sup>

235. The submission stated that “[t]here is no minimum threshold for appealing to VCAT”,<sup>108</sup> and suggests that there have been a number of harness racing matters involving suspensions of less than one month appealed to VCAT, resulting in increased financial costs for HRV and associated resourcing issues.

236. Secondly, the VRI raised concerns about VCAT’s jurisdiction relating to ‘animal offences’. The VRI stated “VCAT has recently accepted an appeal application regarding an offence committed by a greyhound (marring another greyhound) which constitutes a breach of the Racing Rules. As a consequence of this matter, the greyhound has been suspended, not a person”.<sup>109</sup> The VRI position echoed the concerns raised by the Chairman of the GRV RAD Board during the second round of consultation in relation to the jurisdiction of VCAT to hear ‘greyhound racetrack offences’. The GRV RAD Board Chairman queried whether “greyhound racetrack offences should be appealable to VCAT, if appealable at all”.<sup>110</sup>

237. Thirdly, concerns were raised about VCAT’s jurisdiction relating to race protest decisions. The VRI submission stated that VCAT had recently accepted an application from a harness racing trainer regarding a race protest decision, despite advice being received from HRV that the protest decision was not a decision of the HRV RAD Board and therefore could not be reviewed by VCAT. The submission also acknowledged that VCAT dismissed the application for review, on the basis that it was not a decision

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<sup>107</sup> VRI, op. cit., p. 14.

<sup>108</sup> *ibid.*, p. 15.

<sup>109</sup> *ibid.*

<sup>110</sup> Supplementary comments of the GRV RAD Board Chairman, 7 March 2012.

of the HRV RAD Board, but that the applicant was advised that the RAD Board's decision may be appealed to VCAT for review.<sup>111</sup>

238. The Chairman of the RVL RAD Board argued that independent review from a decision of the RVL RAD Board should be removed entirely (limiting review to judicial review before the Supreme Court) or, alternatively, if a right to appeal to VCAT or some other tribunal is maintained, such review should be confined to questions of law, and leave to appeal from such a tribunal should first be obtained.<sup>112</sup>

239. RVL's subsequent feedback indicated that its views had not changed since its original submission, expressing the view that "the appeal right to VCAT should be confined to questions of law and related processes especially given the ongoing challenge of maintaining specialist racing knowledge within the VCAT membership".<sup>113</sup>

240. The suggestion has also been made in a number of stakeholder submissions that VCAT's review jurisdiction could be confined to the hearing of issues of law and the appropriateness of the penalty applied. Separately, concerns have also been raised by the VRI and GRV in particular in relation to VCAT's jurisdiction to review minor matters including greyhound offences occurring during races.<sup>114</sup>

241. In general, VCAT's jurisdiction involves the review of decisions on their merits.<sup>115</sup> It would be out of keeping with VCAT's administrative jurisdiction and functions to seek to confine its appeal jurisdiction to matters of law only.<sup>116</sup>

242. The majority of applications for the review of RAD Board decisions relate to

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<sup>111</sup> VRI, *op. cit.*, pp. 15-16.

<sup>112</sup> Submission of the Chairperson of the RVL RAD Board, 23 February 2012, p. 1.

<sup>113</sup> Supplementary comments of RVL, 29 February 2012.

<sup>114</sup> See *Bartlett v Greyhound Racing Victoria* [2012] VCAT 423.

<sup>115</sup> See *Re Castik Investments Pty Ltd and Stonnington CC* (1999) 3 VPR 46 at 54 - 55, where the Tribunal stated that "the Tribunal reviews the original decision in light of the evidence placed before the Tribunal not before the original decision-maker [and] reaches the correct or preferable decision in light of that evidence. What is reviewed is the merits of the decision, not the legal adequacy of the decision making."

<sup>116</sup> The Hon. Justice Kevin Bell, *One VCAT: President's Review of VCAT* (30 November 2009), pp. 38 - 39.

decisions made by the RAD Boards in their original jurisdiction relating to serious offences. Although such matters are originally charged by the stewards, they are first determined in full by the relevant RAD Board. The review conducted by VCAT provides applicants with their only opportunity for a complete merits review of the decision of the RAD Board. Such offences are also extremely significant for the individual concerned in that the outcome may lead to the individual's loss of livelihood (that is, by way of disqualification or suspension from the industry for a period of time). I consider it appropriate that VCAT be empowered to conduct a full review on the merits of a decision reached by a RAD Board.

243. In relation to the category of offences for which Stewards have the power to both charge and determine, these matters come to the RAD Boards as part of their appellate jurisdiction only. Although the RAD Boards are not required by the Act or the Racing Rules to conduct a complete hearing *de novo*, the appeal provides an opportunity for the reconsideration of the decision made by the stewards and penalty applied.<sup>117</sup>
244. The availability of a single tier of merits review for these kinds of offences, which are first determined by the Stewards and appealable to the RAD Boards, appears reasonable.<sup>118</sup>
245. Therefore, for offences that are brought to the RAD Board in their appellate jurisdiction only, VCAT's review jurisdiction should be removed. Further appeals should be by way of application to the Supreme Court of Victoria only.
246. Removing VCAT's jurisdiction to deal with non-serious offences may also address issues that have been raised by GRV in relation to the hearing of 'animal offences'. As noted in the VRI submission, greyhound offences are generally non-serious and rely on technical knowledge regarding the conduct of greyhound racing.<sup>119</sup>
247. In relation to decisions made by RAD Boards in their original jurisdiction,

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<sup>117</sup> See RVL Racing Rule LR 6D(2); Racing Act ss 50(1)(f) and 83(1)(f).

<sup>118</sup> VRI, *op. cit.*, p. 21.

<sup>119</sup> *ibid*, p. 15.

the availability of full merits review would appear to be appropriate.

### **Should VCAT be Retained as the Racing Appeals Body?**

248. The concerns expressed by racing industry stakeholders in relation to VCAT's time delays, administrative efficiency and the limited development of expertise of VCAT members to hear racing matters are significant. Although there are examples of VCAT adopting good processes for the hearing of RAD Board appeals, particularly with respect to RVL matters, there are a number of areas where processes and procedures appear to require addressing.

249. The VRI expresses the view that, having regard to VCAT's processes, administrative functions, and the diverse caseload that VCAT presides over, the "[current] system is generally not well suited to deal with the particular demands of the racing codes".<sup>120</sup>

250. The submission states "[t]he VRI does not seek to be granted special treatment by VCAT as it would be unfair to VCAT's many other user groups nor would it be a sustainable arrangement."<sup>121</sup> The VRI instead believes that the "solution lies in moving away from the 'one size fits all' VCAT model and identifying a new model that delivers a process that is proportionate to the matter at hand and responsive to the needs of the racing industry".<sup>122</sup>

251. The VRI advocates the reintroduction of a racing industry appellate body, stating that a "key advantage of the proposed [Victorian Racing Appeals Board] model is that it would relieve VCAT's stretched resources of the difficulties it faces in providing an appeal service to a user group requiring highly specialised expertise and more often than not, requiring the service within very short timeframes".<sup>123</sup>

252. The VRI submission concludes that VCAT is an inappropriate forum for the review of RAD Board decisions, and recommends that the right to appeal

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<sup>120</sup> *ibid.*, p. 14.

<sup>121</sup> *ibid.*

<sup>122</sup> *ibid.*

<sup>123</sup> *ibid.*, p. 21.

to VCAT should be replaced with a right to appeal to a Victorian Racing Appeals Board constituted pursuant to the Act but only on matters of law.<sup>124</sup> The specific recommendations made by the VRI in relation to this new body are contained in **Appendix B** of this Report.

253. The VRI submission in relation to the adoption of a new industry appellate body to hear racing matters was supported by a submission from the Victorian Jockeys Association (VJA). However, distinct from the VRI proposal, the VJA maintained that any appeals from decisions of a RAD Board to the kind of body proposed by the VRI must include errors of law, unreasonableness, and issues relating to penalty.<sup>125</sup>

254. During the consultation process, the former Presidents of VCAT acknowledged the industry concerns regarding adjournments and delays of matters, particularly in relation to the review of HRV RAD Board decisions. However, they considered that these issues could be addressed by the refinement of VCAT procedures, and expressed a willingness to work to resolve and address the concerns expressed by the VRI. The former Acting President of VCAT indicated that regular meetings between key VCAT personnel, myself, and representatives from the three codes had strong support from within VCAT, on the basis that "[s]uch meetings would give all concerned an opportunity to raise any problems, examine the flow of cases and the like".<sup>126</sup>

255. Despite this proposal for increased communication and interaction, there is still a concern expressed by the VRI submission that "VCAT and racing are not a good match".<sup>127</sup>

256. My own concern was heightened by the former President of VCAT's statement that "[n]ine cases were lodged in the period 1 March 2010 to 28 February 2011, of which seven cases were disposed of within 16 weeks of lodgement. This is well within the performance standard of 25 weeks set

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<sup>124</sup> VRI, op. cit., p. 16 and pp. 20 - 21.

<sup>125</sup> Submission of the VJA, 29 June 2012, p. 1.

<sup>126</sup> VCAT, 2012, op. cit.

<sup>127</sup> VRI, op. cit., p. 16.

by the Tribunal for disposal of cases."<sup>128</sup>

257. While the timeframe for VCAT's management of racing matters may compare favourably with other VCAT jurisdictions and therefore raise no concerns from a VCAT standard, the timeframes do not compare favourably to the former RAT or address the 'operational' nature of the racing industry. Judge Lewis stated, with dissatisfaction, that the average time for a RAT matter to be lodged and heard was 40 days.<sup>129</sup> Judge Lewis did not stipulate whether he was referring to working days or calendar days, but in either case the average timeframe for the disposition of a matter (8 weeks - working days; 5.7 weeks - calendar days) was considerably shorter than the actual or target timeframes of VCAT.

258. I note that all other states, with the exception of Queensland, have specialised racing appeals tribunals that hear appeals from decisions made in respect of the three codes. In Queensland, the Queensland Civil and Administrative Tribunal hears racing appeals.

259. Clause 12(2) of the *Racing Appeals Tribunal Regulation 2010* (NSW) states "[t]he Tribunal is to commence the hearing of an appeal as soon as practicable within 28 days of the lodging of the notice of the grounds of appeal". Most of the other jurisdictions aim to commence hearing appeals within similar timeframes. VCAT's timeframes are protracted by comparison.

260. I note that although improvements to efficiency and the allocation of resources were key concerns expressed by Judge Lewis, his broader concerns with ensuring transparency and accountability throughout the appeals and disciplinary processes were central to the recommendation that VCAT is the appropriate forum to hear RAD Board appeals. I note that in general, the quality of the decision making at VCAT has not been called into question in the submissions provided as part of the consultation process, but rather the primary issues identified have related to VCAT's administrative efficiency and timeliness.

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<sup>128</sup> VCAT, 2011, op. cit., p. 2

<sup>129</sup> Lewis Report, p. 39.

261. The critical issue of independence must also be considered in relation to a racing appeals body. An administrative review body such as VCAT is independent of the racing industry and has a multi-faceted jurisdiction involving a broad range of sectors, each with multiple interest groups. By contrast, a body constituted to deal only with the racing industry and which repeatedly deals with the same stakeholders is at greater risk of aligning itself with the views or outlook of particular industry participants. The difficulty of recruiting appeal-board members with industry knowledge who are free from conflicts of interest is also significant. If the timeliness of VCAT matters cannot be improved and VCAT is no longer considered the appropriate body to hear racing industry appeals, the issue of independence will be central to decisions around how a new appeals body should be constituted.
262. On 1 May 2013, I wrote to the President of VCAT, his Honour Justice Garde, and set out the issues raised by VRI participants and my concerns about VCAT's administration of the racing appeals system, particularly the time taken to finalise matters. In response, Justice Garde indicated that short and specific timeframes apply to other types of proceedings at VCAT. Justice Garde pointed out that the effectiveness of this approach relies largely on compliance by the parties but VCAT can take a robust approach to requests for adjournments or extensions of time and issue orders for non-compliance.
263. In discussions regarding potential ways of addressing the current issues, Justice Garde stated that specific registry arrangements could be made for the racing industry. However, he also indicated that a cost recovery framework is applied by VCAT to fast-tracked matters of the type contemplated for the racing industry.
264. Justice Garde agreed that steps need to be taken to ensure that VCAT has sufficient members with appropriate experience to sit on racing matters in the future.
265. The key question to be asked is whether to retain the current model or move to the introduction of a new model such as that proposed by the VRI.

The majority of the key concerns relate to administrative matters which could be addressed by various policy/process changes. Rather than consider a change to the existing model, my view is towards the acceptance of VCAT's indication that the VRI concerns could be addressed through various administrative reforms and that VCAT should be afforded the opportunity to effect such changes at the completion of which I would conduct a review as to their effectiveness.

266. In June 2013, Justice Garde gave instructions for the preparation of a VCAT 'Practice Note' to govern racing matters. VCAT has since consulted with my office and, through my office, the controlling bodies to ensure the new processes address the identified issues. The draft Practice Note sets out processes for the management of matters and sets a timeframe from the date of application to hearing. VCAT is currently deliberating on a revised draft Practice Note. The controlling bodies currently pay the bulk of the costs of VCAT reviews and this will continue but payment will be up front (rather than invoiced later) and will be set according to fixed rates. Justice Garde has also assigned a Registrar to manage racing matters.

### **Proposed Recommendations**

- 11. That a specific VCAT Registrar be assigned to manage all racing matters.**
- 12. That VCAT develop a pool of at least two VCAT members (with non-RAT backgrounds) available to hear racing matters, in addition to the former RAT members who are currently available.**
- 13. That VCAT ratifies a Practice Note to introduce policies/practices to address existing concerns regarding racing appeal matters, particularly in respect of timeframes.**
- 14. That the *Racing Act 1958* be amended so that VCAT's jurisdiction to review decisions of RAD Boards is limited to decisions made by RAD Boards in their original jurisdiction. For matters that RAD Boards hear in their appellate jurisdiction, any further appeals should be to the Supreme Court on errors of law only.**



## **Conclusion**

267. This review was the first detailed examination of the appeals and disciplinary model introduced to the racing industry on 1 March 2010.

268. There were many benefits gained from undertaking this work, including the introduction of a better and more detailed system for the recording and reporting of information and the understanding of the codes' concerns through the consultation and submission process.

269. Amongst other reforms, the 2010 model removed an industry appellate body and replaced it with an independent body. It's clear that this change brought with it a number of industry concerns, particularly those relating to administrative efficiency and effectiveness. Rather than revert back to an industry body, I am predisposed to retaining the existing system and introducing a number of changes to address the identified concerns. The four recommendations outlining these changes should be implemented immediately. At the conclusion of a set period I will then review their effect and reconsider my current findings.

270. The other ten recommendations relate to the racing industry and in particular, the RAD Boards. I am confident that the implementation of these recommendations will address many of the VRI's concerns.

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## **PART 4 – OUTCOMES OF THE STATISTICAL ANALYSIS**

### **Serious Offences - Statistical Overview**

271. In the two-year reporting period, the GRV RAD Board conducted the highest number of serious offences hearings (53 hearings for a total of 59 charges). The HRV RAD Board had the next highest number of serious offence hearings (40 hearings for a total of 86 charges). The RVL RAD Board had the least number of hearings (36), but exceeded GRV in terms of the total number of serious offence charges laid (71).

272. The most common serious offences involved rules that require a horse or greyhound to be presented for a race free of prohibited substances.<sup>130</sup> Overall, drug offences tended to make up a significant proportion of the serious offences charged by Stewards from each of the codes. For example, 30 of the 71 serious offence charges laid by RVL in the two-year reporting period involved drug offences, and this ranged from 39 per cent of serious offence charges in the first year of operation to 50 per cent in the second year of operation. For GRV, 39 of the 59 serious offence charges coming before the RAD Board involved drug offences, being 68 per cent of serious offence charges in the first year and 65 per cent of serious offence charges in the second year. Only HRV showed a significant variation in the drug offence charges in the first two years of operation of its RAD Board. Only 20 of the 86 serious offence charges in the two-year reporting period involved drug offences, being 46 per cent of serious offence charges in the first year, and reducing to just 11 per cent of serious offence charges in the second year.

273. The average length of time taken by the three RAD Boards to hear and determine serious offences varied between 27 and 48 business days in the two-year reporting period. The RVL RAD Board tended to hear matters within the shortest period, averaging 27 business days, with an average hearing time of 2 hours and 19 minutes.<sup>131</sup> The average period for a

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<sup>130</sup> See AR 178 (RVL); AHR 190(1) (HRV) and GAR 83(2)(3) (GRV).

<sup>131</sup> One matter took 238 business days to be finalised by the RVL RAD Board, which resulted in an increase in the RVL RAD Board average from 15 days to 25 days.

matter to be heard and determined by the GRV RAD was 30 business days, with an average hearing time of around 1 hour and 40 minutes. The HRV RAD Board took the longest amount of time to hear and determine a matter, on average 48 business days in the reporting period. The HRV RAD Board hearing times were 3 hours and 33 minutes on average.

274. The data indicates that, consistently across all of the codes, most serious offence charges are found to be proven when heard by RAD Boards. For the RVL RAD Board, in the first year of the reporting period, 89 per cent of charges that went to hearing were proven and just 11 per cent dismissed. In the second year, 95.5 per cent of charges were proven.
275. For HRV, the first year of operation of the RAD Board saw 100 per cent of charges that proceeded to decision proven, and in the second year the figure was 93 per cent. For GRV, 92 per cent of serious offence charges were proven in the first year of operation and 100 per cent in the second year.

## RAD Board Serious Offence Charges data (1 March 2010 - 28 February 2012)

## Codes Comparison Table

RVL Serious Charges		HRV Serious Charges		GRV Serious Charges	
Mar 2010 – Feb 2011	Mar 2011 – Feb 2012	Mar 2010 – Feb 2011	Mar 2011 – Feb 2012	Mar 2010 – Feb 2011	Mar 2011 – Feb 2012
<b>RVL - Number of Serious Charge Hearings</b>		<b>HRV - Number of Serious Charge Hearings</b>		<b>GRV - Number of Serious Charge Hearings</b>	
24	12	17	23	23	30
<b>RVL – Number of Serious Charges Laid</b>		<b>HRV – Number of Serious Charges Laid</b>		<b>GRV – Number of Serious Charges Laid</b>	
49	22	30	56	25	34
<b>RVL - Hearings by Month (Highest Number)</b>		<b>HRV - Hearings by Month (Highest Number)</b>		<b>GRV - Hearings by Month (Highest Number)</b>	
21% - March 21% - June	33% - December 16.5% - July & October	21% - May 21% - October	48% - March 18% - April	22% - August 22% - February	20% - May 20% - October
<b>RVL - Representation at Hearing</b>		<b>HRV - Representation at Hearing</b>		<b>GRV - Representation at Hearing</b>	
54% - representation 37.5% - own behalf 8.5% - did not attend	33.5% - representation 66.5% - own behalf 0%- did not attend	47% - representation 47% - own behalf 6% - did not attend	74% - representation 26% - own behalf 0% - did not attend	35% - representation 48% - own behalf 17% - did not attend	16.5% - representation 73.5% - own behalf 10% - did not attend
<b>RVL – Plea</b>		<b>HRV – Plea</b>		<b>GRV - Plea</b>	
73.5% - guilty 16.5% - not guilty 8% - no plea entered 2% - reserved plea	77% - guilty 23% - not guilty 0% - no plea entered 0% - reserved plea	60% - guilty 17% - not guilty 20% - no plea entered 0% - reserved plea	43% - guilty 57% - not guilty 0% - no plea entered 0% - reserved plea	44% - guilty 40% - not guilty 16% - no plea entered 0% - reserved plea	55.5% - guilty 29.5% - not guilty 15% - no plea entered 0% - reserved plea

RVL Serious Charges		HRV Serious Charges		GRV Serious Charges	
RVL - Rules Underpinning Serious Charges Laid		HRV - Rules Underpinning Serious Charges Laid		GRV - Rules Underpinning Serious Charges Laid	
22% - AR 178 8% - AR 175 (a) 8% - AR 91 8% - AR 175 (A)	42% - AR 178 14% - AR 175 (g) 10% - AR175 (gg) 9%% - AR175 (h)(ii)	40% - AHR 190 (1) 7% - AHR 187 (2) 7% - AHR 248 7% - AHR190 (2)	17.5% - AHR 231 (1) 10.5% - AHR 190 (1) 9% - AHR 187 (2) 9% - AHR 90A (2.9)(a)	32% - GAR 83 (2) 20% - GAR 86 (o) 12% - GAR 106 (1)(d) 12% - GAR 86 (e)	65% - GAR 83 (2) 12% - GAR 86 (o) 12% - GAR 86 (q) 6% - GAR 86 (e)
RVL – Percentage of charges related to Prohibited Substances		HRV - Percentage of charges related to Prohibited Substances		GRV - Percentage of charges related to Prohibited Substances	
39%	50%	46%	11%	68%	65%
RVL – Findings for charges		HRV - Findings for charges		GRV - Findings for charges	
41 proven	21 proven	29 proven	51 proven	23 proven	33 proven
5 dismissed 3 withdrawn	1 dismissed	1 withdrawn	4 dismissed/no finding, 1 withdrawn	2 dismissed	1 dismissed
RVL - Fines Issued by RAD Board (by amount)		HRV - Fines Issued by RAD Board (by amount)		GRV - Fines Issued by RAD Board (by amount)	
3% - \$10,000	0% - \$10,000	19% - \$10,000	3% - \$10,000	7.5% - \$10,000	0% - \$10,000
0% - \$8,000	7% - \$8,000	6% - \$8,000	0% - \$8,000	7.5% - \$5,000	0% - \$5,000
0% - \$7,500	7% - \$7,500	0% - \$7,000	3% - \$7,000	7.5% - \$4,000	5.5% - \$4,000
0% - \$6,000	0% - \$6,000	13% - \$6,000	3% - \$6,000	0% - \$3,000	5.5% - \$3,000
6% - \$5,000	0% - \$5,000	0% - \$5,000	0% - \$5,000	15.5% - \$2,500	0% - \$2,500
3% - \$4,000	7% - \$4,000	0% - \$4,000	0% - \$4,000	7.5% - \$1,000	5.5% - \$1,000
12% - \$3,500	0% - \$3,500	0% - \$3,500	0% - \$3,500	0% - \$750	18.5% - \$750
6% - \$3,000	0% - \$3,000	6% - \$3,000	3% - \$3,000	23.5% - \$500	41.5% - \$500
0% - \$2,500	7% - \$2,500	0% - \$2,500	3% - \$2,500	0% - \$300	5.5% - \$300

RVL Serious Charges		HRV Serious Charges		GRV Serious Charges	
15% - \$2,000	14.5% - \$2,000	6% - \$2,000	6% - \$2,000	31% - \$250	12.5% - \$250
15% - \$1,000	14.5% - \$1,000	0% - \$1,500	9% - \$1,500	0% - \$200	5.5% - \$200
3% - \$600	0% - \$600	0% - \$1,000	30.5% - \$1,000		
12% - \$500	21.5% - \$500	0% - \$800	3% - \$800		
3% - \$400	0% - \$400	44% - \$500	15.5% - \$500		
3% - \$300	0% - \$300	0% - \$400	0% - \$400		
15% - \$250	7% - \$250	0% - \$300	6% - \$300		
3% - \$150	0% - \$150	6% - \$250	12% - \$250		
0% - \$100	7% - \$100	0% - \$200	3% - \$200		
0% - \$50	7% - \$50	0% - \$100	0% - \$100		
		0% - \$50	0% - \$50		

## Racing Victoria Limited Serious Offence Hearings

### **General Overview**

276. The RVL RAD Board ran 36 serious charge hearings between 1 March 2010 and 28 February 2012. Twenty-four hearings were held in the first year (2010/11) and 12 hearings were held in the second year (2011/12).
277. During the two-year period, 36 people including trainers, jockeys, professional punters / commission agents, jumps jockeys, picnic jockeys and stable employees were charged with 71 serious offences.
278. Trainers represented 50 per cent of people charged with a serious offence in 2010/11 and 92 per cent in the 2011/12 period. Jockeys represented 25 per cent of serious charges in 2010/11, however no jockeys were charged with a serious offence in the 2011/12 period.
279. During the two-year reporting period, the most common serious charges related to breaches of AR 178. (*When any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised*). In the second year of reporting, 42 per cent of serious breaches related to AR 178, which was almost double the figure for the previous year (22 per cent).
280. Thirty nine per cent of all serious charges during the 2010/11 period related to prohibited substances, whereas in the 2011/12 period, half of the charges related to prohibited substance charges. A breakdown of prohibited substance related charges identified Darbopoetin Alfa in 32 per cent of the charges in 2010/11, however Darbopoetin Alfa was not evident in 2011/12. Ibuprofen was the only prohibited substance that was detected in both years of reporting.
281. Over half of the persons charged with a serious offence (54 per cent) attended the hearing with representation in 2010/11, whereas more persons (66.5 per cent) appeared on their own behalf in 2011/12.



282. Slightly more people pleaded guilty to charges in the second year of reporting, 73.5 per cent in 2010/11 and 77 per cent in 2011/12.

283. The most common decision handed down by the RAD Board over the two-year period was a conviction and fine. The 2011/12 period saw a significant increase in the number of people handed a conviction and fine (63.5 per cent) in comparison to the previous year (46 per cent).

284. During the reporting period, the time between the date of the charge and the date the hearing concluded averaged 27 business days. The length of a hearing averaged 2 hours and 19 minutes.

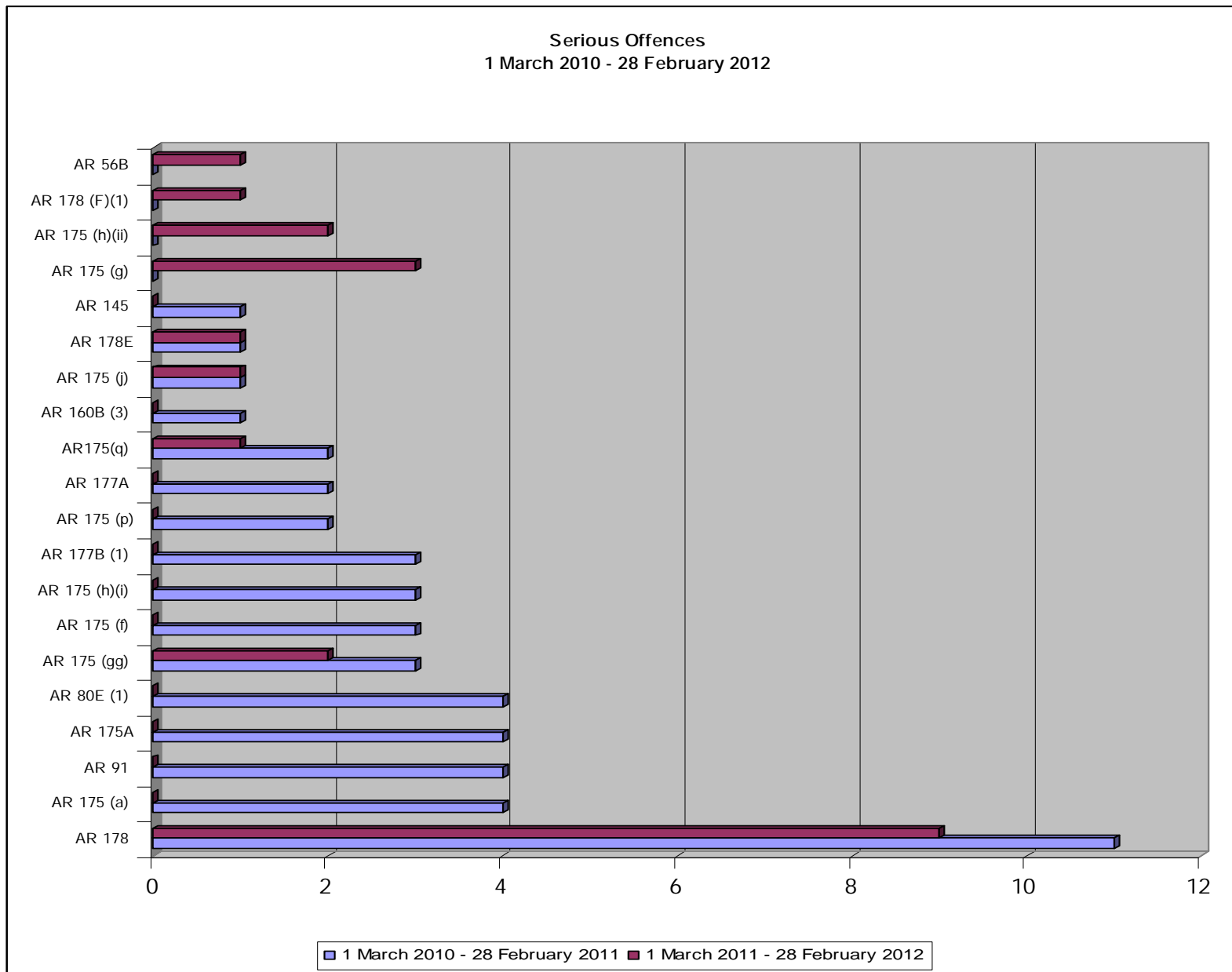
### ***Persons Charged***

**Table 1: RVL Persons charged**

<b>Persons Charged</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Trainer	12	50	11	92
Jockey	6	25	0	0
Prof. Punter / Commission Agent	3	13	0	0
Stable Employee	1	4	1	8
Picnic Jockey	1	4	0	0
Jumps Jockey	1	4	0	0
	<b>24</b>	<b>100</b>	<b>12</b>	<b>100</b>

285. Between 1 March 2010 and 28 February 2011, 24 people were charged with a serious offence. During the same period the following year, 12 people were charged with a serious offence.

286. Half of the persons charged in 2010/11 period were trainers, followed by jockeys (25 per cent). In the 2011/12 period, the vast majority of persons charged with a serious offence were trainers (92 per cent), whereas no jockeys were charged.



### **Serious Offences**

287. Forty-nine serious offence charges were recorded between 1 March 2010 and 28 February 2011 and 22 serious offence charges were recorded between the 1 March 2011 and 28 February 2012.

288. Five rules relating to serious offences were represented in both years of the reporting period. AR 178 (*prohibited substance detected in any sample taken from a horse prior to or following its running in any race*) represented the highest number of serious offence charges (22 per cent) between March 2010 and February 2011 and 42 per cent between March 2011 and February 2012.

289. Other rule breaches that appear in both years of reporting relate to AR 175(q), AR 175(gg), AR 175(j) and AR 178E<sup>132</sup>, each representing similar numbers of charges during the two-year period.

### **Prohibited Substances**

**Table 2: RVL Prohibited substance charges**

<b>Charges</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Other charges	30	61	11	50
Prohibited substance related charges	19	39	11	50
	<b>49</b>	<b>100</b>	<b>22</b>	<b>100</b>

<sup>132</sup> AR 175 The Committee of any Club or the Stewards may penalise:

...

(gg) Any person who makes any false or misleading statement or declaration in respect of any matter in connection with the administration or control of racing.

...

(j) Any person guilty of improper or insulting behaviour at any time towards the Committee of any Club or Association or any member thereof, or Stewards, or any official, in relation to their or his duties.

...

(q) Any person who in their opinion is guilty of misconduct, improper conduct or unseemly behaviour.

AR 178E (1) Notwithstanding the provisions of AR 178C(2), no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.

(2) The Stewards may order the withdrawal from a race engagement any horse that has received medication in contravention of sub-rule (1) of this rule.

290. During the 2010/11 period, 19 (39 per cent) of the 49 offences recorded related to prohibited substance charges (AR 177A, AR 178, AR 175(h)(i) and AR 177B(1)).

291. During the 2011/12, half of the offences (50 per cent) related to prohibited substance charges (AR 178 and AR 175 (h)(i)).

**Table 3: RVL Prohibited substances used**

Prohibited Substances	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Darbopoetin Alfa	6	32	0	0
3-Methoxytyramine	4	21	0	0
Ibuprofen	4	21	1	9
Phenylbutazone and Oxyphenbutazone	2	10	0	0
N'Butylhyoscine and Dipyrone	1	5	0	0
Dexamethasone	1	5.5	0	0
Procaine	1	5.5	0	0
TCO2 (Alkalisising agents)	0	0	4	36.5
Caffeine (Theophyllin, Parazanthine, Theobromine)	0	0	2	18.5
Hydrocortisone	0	0	1	9
Testosterone	0	0	1	9
Oripavine	0	0	1	9
Sotalol	0	0	1	9
	<b>19</b>	<b>100</b>	<b>11</b>	<b>100</b>

292. During the two-year period, Ibuprofen was the only prohibited substance resulting in prosecutions in both years.

293. Thirty two per cent of prohibited substances resulting in charges in 2010/11 related to Darbopoetin Alfa, whereas 36.5 per cent of prohibited substances resulting in charges in 2011/12 related to elevated TCO2 levels. Darbopoetin Alfa, prosecuted in 2010/11, was not of any charges in the 2011/12 period and excessive TCO2 levels were not the basis of

charges in the first year.

### ***Representation***

**Table 4: RVL RAD Board representation**

<b>Representation</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Representation, legal or other	13	54	4	33.5
Appeared on own behalf	9	37.5	8	66.5
Did not attend	2	8.5	0	0
	<b>24</b>	<b>100</b>	<b>12</b>	<b>100</b>

294. Fifty four per cent of persons charged with a serious offence during the 2010/11 reporting period attended the hearing with representation, whereas only 33.5 per cent of persons charged in 2011/12 attended with representation.

295. More persons charged in the second year of reporting appeared on their own behalf and all attended their hearings.

### ***Plea***

**Table 5: RVL RAD Board pleas**

<b>Plea</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Guilty	36	73.5	17	77
Not guilty	8	16.5	5	23
No plea entered	4	8	0	0
Reserved plea	1	2	0	0
	<b>49</b>	<b>100</b>	<b>22</b>	<b>100</b>

296. The majority of persons charged with a serious offence over the two-year period pleaded guilty. A higher proportion of charged persons pleaded not guilty in 2011/12 than the previous period.

297. In 2010/11, eight per cent of persons did not enter a plea and two per cent

reserved their plea.

### **Decisions**

**Table 6: RVL RAD Board charges proven or dismissed**

<b>Decisions</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 - Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Proven	41	89	21	95.5
Dismissed	5	11	1	4.5
	<b>46</b>	<b>100</b>	<b>22</b>	<b>100</b>

298. In the first year of the reporting period, 89 per cent of charges that proceeded to hearing were proven, and just 11 per cent dismissed. Stewards withdrew three charges. In the second year, 95.5 per cent of charges were proven and the remainder dismissed.

**Table 7: RVL RAD Board penalties**

<b>Penalties</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Conviction and fine	22	46	14	63.5
Fine only	9	20	0	0
Dismissed	5	11	1	4.5
Conviction/ fine / suspension and/or disqualification	3	6.5	0	0
Conviction / suspension and/or disqualification	3	6.5	4	18.5
Warned off	2	5	0	0
Suspension and/or disqualification only	1	2.5	0	0
Conviction only	1	2.5	2	9
Conviction and severe reprimand	0	0	0	0
Severe reprimand	0	0	0	0
Warned off and fine	0	0	0	0
Proved, no conviction or penalty	0	0	1	4.5
	<b>46</b>	<b>100</b>	<b>22</b>	<b>100</b>

299. During the 2010/11 reporting period, 46 per cent of serious offence charges resulted in a conviction and fine, 20 per cent resulted in a fine only, 11 per cent were dismissed and 6.5 per cent resulted in a conviction, fine and suspension and/or disqualification, and a further 6.5 per cent resulted in a conviction, suspension and/or disqualification.

300. In the second year of reporting, more than half (63.5 per cent) of the decisions resulted in a conviction and a fine and no person charged with a serious offence received a fine without conviction. 4.5 per cent of serious offence charges were dismissed and no decisions of conviction, fine and suspension and/or disqualification were handed down. 18.5 per cent of charges resulted in a conviction and suspension and/or disqualification.

**Table 8: RVL RAD Board Fines Imposed**

Fine	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
\$10,000	1	3	0	0
\$8,000	0	0	1	7
\$7,500	0	0	1	7
\$6,000	0	0	0	0
\$5,000	2	6	0	0
\$4,000	1	3	1	7
\$3,500	4	12	0	0
\$3,000	2	6	0	0
\$2,500	0	0	1	7
\$2,000	5	15	2	14.5
\$1,000	5	15	2	14.5
\$600	1	3	0	0
\$500	4	12	3	21.5
\$400	1	3	0	0
\$300	1	3	0	0
\$250	5	15	1	7

Fine	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
\$150	1	3	0	0
\$100	1	0	1	7
\$50	0	0	1	7
	<b>34</b>	<b>100</b>	<b>14</b>	<b>100</b>

301. Of the fines issued in 2010/11, 15 per cent were for \$2,000, 15 per cent were for \$1,000 and a further 15 per cent were fines of \$250. In the 2011/12 reporting period, the largest percentage of fines (21.5 per cent) were of \$500, followed by fines of \$1,000 and \$2,000 (14.5 per cent each).

**Table 9: RVL Penalties imposed for breaches of AR 178**

Year	Breach	Decision	Fine	Notes	Prohibited Substance
2011/12	1 breach	Conviction and fine	\$ 8,000		Ibuprofen
2010/11	1 breach	Conviction and fine	\$ 5,000		Dexamethasone
2010/11	1 breach	Conviction and fine	\$ 4,000		Ibuprofen
2011/12	1 breach	Conviction and fine	\$ 4,000		Hydrocortisone
2010/11	4 breaches	Conviction and fine	\$ 3,500	for each charge	3-Methoxytyramine
2010/11	1 breach	Conviction and fine	\$ 3,000		N'Butylhyoscine & Dipyrone
2010/11	1 breach	Conviction and fine	\$ 3,000		Ibuprofen
2010/11	2 breaches	Conviction and fine	\$ 2,000	for each charge	Ibuprofen
2010/11	1 breach	Conviction and fine	\$ 2,000		Procaine
2011/12	2 breaches	Conviction and fine	\$ 2,000	fine to be paid concurrently	Caffeine
2011/12	1 breach	Conviction and fine	\$ 1,000		Testosterone
2011/12	1 breach	Conviction, no penalty	\$ -		Oripavine
2011/12	1 breach	Conviction, no penalty	\$ -		TCO2
2011/12	1 breach	Conviction and suspension	\$ -	2 month suspension	TCO2
2011/12	1 breach	Proved, no conviction recorded / penalty imposed	\$ -		Sotalol

Shading distinguishes the year within the reporting period.



302. During the two-year reporting period, 15 people breached AR 178 (*prohibited substance detected in any sample taken from a horse prior to or following its running in any race*) and were handed a variety of penalties by the RAD Board. The majority of people (73 per cent) received a conviction and fine, two people received a conviction with no penalty, one person was convicted and suspended and for one person the charge was proven but no conviction or penalty was imposed.
303. Four people charged with the use of Ibuprofen received a conviction and fine, with the fines varying between \$2,000 and \$8,000.
304. Two people charged with excessive levels of TCO2 received convictions, however one did not receive a penalty while the other received a two-month suspension.
305. Two people charged during the reporting period appeared twice before the RAD Board with charges relating to the use of prohibited substances. In one instance, one person was convicted and fined on both occasions for the use of Ibuprofen, with the fine increasing by \$4,000, while the other person was convicted and fined on one occasion for the use of N'Butylhyoscine & Dipyron and convicted with no penalty for the use of Oripavine.

**Table 10: RVL Penalties imposed for breaches of AR 175(gg)<sup>133</sup>**

Year	Breach	Decision	Fine	Notes
2011/12	1 breach	Conviction and fine	\$ 2,500	
2010/11	1 breach	Conviction, fine and suspension	\$ 1,000	1 month
2010/11	2 breaches	Charge 1 withdrawn Charge 2 fine with no conviction	\$ 1,000	
2011/12	1 breach	Conviction and suspension	\$ -	1 month

Shading distinguishes the year within the reporting period.

306. During the reporting period, five people breached AR 175 (gg) and were handed a variety of penalties by the RAD Board. During this time, two

<sup>133</sup> AR 175(gg) The Committee of any Club or the Stewards may penalise any person who makes any false or misleading statement or declaration in respect of any matter in connection with the administration or control of racing.

people were suspended from training for a one-month period, however one person received a fine as well as a suspension.

### **Hearings**

**Table 11: RVL RAD Board hearing months**

<b>Month</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
March	5	21	1	8.5
April	1	4	1	8.5
May	2	8.5	0	0
June	5	21	1	8.5
July	3	12.5	2	16.5
August	1	4	0	0
September	3	12.5	0	0
October	0	0	2	16.5
November	2	8.5	1	8.5
December	1	4	4	33
January	1	4	0	0
February	0	0	0	0
	<b>24</b>	<b>100</b>	<b>12</b>	<b>100</b>

307. Twenty one per cent of serious charge hearings in the 2010/11 period were held in March and June, whereas 33 per cent of serious offence hearings in 2011/12 period were heard in December.

### **Duration of Hearings**

308. Over the two-year period, the time between the issuing of charges and the date of the conclusion of hearings averaged 27 business days. Five cases took between 55 and 78 days for the hearing to commence. One case took 246 days, which increased the average time between the date charges were issued to the date they were heard from 20 days to 27 days.

309. During the two-year reporting period, the length of a serious charge hearing averaged two hours and 19 minutes.

***RAD Board Panel Composition***

310. During the 2010/11 period, there were 12 members of the RAD Board, all of whom sat on at least one serious charge hearing.

- (a) The Chairman sat on 17 of the 24 hearings
- (b) The Deputy Chairman sat on 11 hearings
- (c) Seven members sat on four or more hearings.

311. On 31 July 2011, two members retired. On 1 August 2011, three new members were appointed. As a result of these changes, there were 13 members of the RAD Board for most of the 2011/12 reporting period, and 15 persons were members at some point during the year.

312. In the 2011/12 period, five members of the RAD Board did not sit on a serious charge hearing.

- (a) The Chairman sat on 11 of the 12 hearings
- (b) The Deputy Chairman sat on seven hearings
- (c) Ten members sat on between one and three hearings each

***Use of Electronic Equipment***

313. The majority of serious charge hearings did not require additional electronic equipment in 2010/11. Three hearings required the use of security video from a taxi rank, a telephone for a conference call, and a laptop with speakers respectively.

314. No hearings in 2011/12 required additional electronic equipment.

## **Harness Racing Victoria Serious Offence Hearings**

### ***General Overview***

315. The HRV RAD Board presided over 40 serious offence hearings between 1 March 2010 and 28 February 2012. Seventeen hearings were held in the first year (2010/11) and 23 hearings were held in the second year (2011/12).
316. During the two-year period, 40 people including trainers, drivers, owners and stable hands were charged with 86 serious offences.
317. Drivers represented 76 per cent of people charged with a serious offence in 2010/11 and trainers represented 65 per cent of people charged with a serious offence in 2011/12.
318. The most common serious offence charge (40 per cent) in 2010/11 related to a breach of AHR 190(1) (*A horse shall be presented for a race free of prohibited substances*), whereas in 2011/12 it only accounted for 10.5 per cent of serious offence charges.
319. In total, fifty four per cent of serious offence charges during 2010/11 related to prohibited substances, whereas in 2011/12 only 10.5 per cent of serious offence charges related to prohibited substances. Further analysis identified Aminocaproic Acid in 65 per cent of charges related to prohibited substances in 2010/11, while in 2011/12 elevated TCO<sub>2</sub> levels was the prominent issue (83.5 per cent of all charges relating to prohibited substances).
320. Forty seven per cent of persons charged with a serious offence attended the hearing with representation in 2010/11, whereas significantly more people attended with representation the following year (74 per cent).
321. In 2010/11, more people pleaded guilty (60 per cent) than those charged with a serious offence in 2011/12 (43 per cent).
322. In the two-year period, the most common decision handed down was a conviction and fine (47 per cent of decisions in 2010/11 and 48 per cent in

2011/12).

323. Forty-nine business days was the average time between the date of the notice of charge and the date of the conclusion of the hearing over the two-year period.

324. The length of a hearing averaged three hours and 33 minutes.

### ***Persons Charged***

**Table 1: HRV Persons charged**

<b>Persons Charged</b>	<b>Mar 2010 - Feb 2011</b>		<b>Mar 2011 - Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Owner	2	12	1	4.5
Trainer	2	12	15	65
Driver	13	76	6	26
Stable hand	0	0	1	4.5
	<b>17</b>	<b>100</b>	<b>23</b>	<b>100</b>

325. Between 1 March 2010 and 28 February 2011, 17 people were charged with a serious offence. During the same period the following year, 23 people were charged with a serious offence.

326. The majority of persons charged with a serious offence in 2010/11 were drivers (76 per cent). In 2011/12, trainers made up the majority of persons subject to serious charges (65 per cent), while drivers only represented 26 per cent.

### ***Serious Charges***

**Table 2: Serious Offence Charges**

<b>Rule allegedly breached</b>	<b>Mar 2010 – Feb 2011</b>	<b>Mar 2011 – Feb 2012</b>
	<b>Number of charges</b>	<b>Number of charges</b>
AHR 190 (1)	12	6

	Mar 2010 – Feb 2011	Mar 2011 – Feb 2012
Rule allegedly breached	Number of charges	Number of charges
AHR 187(2)	2	5
AHR 248	2	0
AHR 196A (1)(II)	2	0
AHR 190 (2)	2	0
AHR 231(1)	1	10
AHR 243	1	4
AHR 213(B)	1	0
AHR 187 (5)	1	2
AHR 187 (1)	1	0
AHR 232	1	0
AHR 193(3)	1	1
AHR 162 (1)(y)	1	0
AHR 187 (3)	1	4
AHR 194	1	0
AHR 90A (2.9) (a)	0	5
AHR 91 (1) (a)	0	4
AHR 259 (1) (h)	0	3
AHR 247	0	2
AHR 168 (1)	0	2
AHR 190B (1)	0	2
AHR 238	0	2
AHR 230	0	1
AHR 231 (2)	0	1
AHR 163 (1) (a)	0	1
AHR 163 (1) (c)	0	1
	<b>30</b>	<b>56</b>

327. Thirty serious offence charges were recorded between 1 March 2010 and 28 February 2011 and 56 serious offence charges were recorded between 1 March 2011 and 28 February 2012.

328. During the two-year reporting period, seven rule breaches relating to serious offences were recorded in both years. AHR 190(1) (*A horse shall be presented for a race free of prohibited substances*) represented the highest number of serious offences between March 2010 and February 2011 (40 per cent) and, although it was represented in the following year, it only accounted for 10.5 per cent of serious offence charges.
329. AHR 231(1) (*A person shall not threaten, harass, intimidate, abuse, assault or otherwise interfere improperly with anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it*) represented the highest number of alleged breaches between March 2011 and February 2012 (18 per cent), while only representing 3.5 per cent of alleged serious breaches the previous year.
330. Other rules that were allegedly breached in both years of reporting included AHR 187(2), AHR 243, AHR 187(5), AHR 193(3) and AHR 187(3).<sup>134</sup> While breaches of the five rules were represented in both years of reporting, their incidence all increased slightly in the 2011/12 period, with the exception of AHR 193(3) which remained the same in both periods.

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<sup>134</sup> AHR 187 (2) A person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.

(3) A person shall comply with an order or direction given by the Stewards.

...

(5) A person shall not abuse, intimidate or be deliberately obstructive of the Stewards.

AHR 193(3) A person shall not administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.

AHR 243 A person employed, engaged or participating in the harness racing industry shall not behave in a way that is prejudicial or detrimental to the industry.

**Prohibited Substances****Table 3: HRV Prohibited substance charges**

Charges	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Other charges	16	54	50	89
Prohibited substance related charges	14	46	6	11
	<b>30</b>	<b>100</b>	<b>56</b>	<b>100</b>

331. During the 2010/11 reporting period, nearly half (46 per cent) of the serious offence charges related to prohibited substances, whereas in the 2011/12 period, prohibited substances only accounted for 10.5 per cent of serious offence charges.

**Table 4: HRV Prohibited substances used**

Prohibited Substances	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Ipratropium	1	7	0	0
Aminocaproic Acid	9	65	0	0
Darbepoetin Alfa	1	7	0	0
Didesmethyl-Chlorpheniramine	1	7	0	0
Ranitidine	1	7	0	0
Testosterone	1	7	0	0
Heptaminol	0	0	1	16.5
Excessive TCO2	0	0	5	83.5
	<b>14</b>	<b>100</b>	<b>6</b>	<b>100</b>

332. Aminocaproic Acid was detected in 65 per cent of prohibited substance related charges in 2010/11 and not detected in 2011/12. Excessive TCO2 levels represented 83.5 per cent of prohibited substance-related charges in 2011/12 but were not detected in the previous year.



## Representation

**Table 5: HRV RAD Board representation**

Representation	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Representation, legal or other	8	47	17	74
Appeared on own behalf	8	47	6	26
Did not attend	1	6	0	0
	<b>17</b>	<b>100</b>	<b>23</b>	<b>100</b>

333. Forty seven per cent of persons charged with a serious offence during the 2010/11 reporting period attended the hearing with representation, legal or other, and a further 47 per cent appeared on their own behalf. The following year saw an increase in the proportion of people attending a hearing with representation (74 per cent) and only 26 per cent appeared on their own behalf.

## Plea

**Table 6: HRV RAD Board pleas**

Plea	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Guilty	18	60	24	43
Not guilty	5	17	32	57
No plea entered	7	23	0	0
Reserved plea	0	0	0	0
	<b>30</b>	<b>100</b>	<b>56</b>	<b>100</b>

334. The second year of reporting saw a significant change in the number of guilty pleas and not guilty pleas. Sixty per cent of persons charged with a serious offence pleaded guilty and 17 per cent pleaded not guilty between March 2010 and February 2011. In the following year, significantly more people (57 per cent) pleaded not guilty, while considerably less (43 per

cent) pleaded guilty. Not surprisingly, as not guilty pleas increased, so too did the use of representation at hearings.

### **Decisions**

**Table 7: HRV RAD Board charges proven or dismissed**

<b>Decisions</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Proven	29	100	51	93
Dismissed / no finding	0	0	4	7
	<b>29</b>	<b>100</b>	<b>55</b>	<b>100</b>

335. In each year, one charge did not proceed to decision as it was withdrawn by the Stewards. In the first year of the reporting period, 100 per cent of charges that were heard were proven. In the second year, 93 per cent of charges that proceeded were proven and the remainder dismissed.

**Table 8: HRV RAD Board penalties**

<b>Penalties</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Conviction and fine	14	47	27	48
Fine only	1	3.5	3	5
Dismissed	0	0	3	5
Conviction/ fine / suspension and/or disqualification	2	6.5	3	5
Conviction / suspension and/or disqualification	2	6.5	13	23
Suspension and/or disqualification only	1	3.5	0	0
Conviction only	4	13	0	0
Conviction and severe reprimand	1	3.5	5	9
Severe reprimand	2	6.5	0	0
No finding	0	0	1	2.5
Warned off	2	6.5	0	0

<b>Penalties</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Proved, no conviction or penalty	0	0	0	0
	<b>39</b>	<b>100</b>	<b>55</b>	<b>100</b>

336. The most common decision handed down by the HRV RAD Board was a conviction and fine (47 per cent of charges in 2010 /11 and 48 per cent in the following year). The 2010/11 period saw a greater variety of decisions handed down by the RAD Board compared to the following year when 23 per cent of decisions resulted in a conviction and suspension and/or disqualification.

**Table 9: HRV RAD Board fines imposed**

<b>Fine</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
\$10,000	3	19	1	3
\$8,000	1	6	0	0
\$7,000	0	0	1	3
\$6,000	2	13	1	3
\$5,000	0	0	0	0
\$4,000	0	0	0	0
\$3,500	0	0	0	0
\$3,000	1	6	1	3
\$2,500	0	0	1	3
\$2,000	1	6	2	6
\$1,500	0	0	3	9
\$1,000	0	0	10	30.5
\$800	0	0	1	3
\$500	7	44	5	15.5
\$400	0	0	0	0
\$300	0	0	2	6
\$250	1	6	4	12

Fine	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
\$200	0	0	1	3
\$100	0	0	0	0
\$50	0	0	0	0
	<b>16</b>	<b>100</b>	<b>33</b>	<b>100</b>

337. The most common fine amount in 2010/11 was \$500 (seven instances), followed by three fines of \$10,000 and a further two fines of \$6,000. In 2011/12, the most common fine was for \$1,000 (10 instances) followed by five fines valued at \$500 and four fines of \$250.

**Table 10: HRV Penalties imposed for breaches of AHR 190(1)**

Year	Breach	Decision	Fine	Notes	Prohibited Substances
2010/11	2 breaches	Conviction and fine, \$10,000 each	\$20,000		Aminocaproic Acid
2010/11	2 breaches	Conviction and fine, \$6000 each	\$12,000		Aminocaproic Acid
2010/11	2 breaches	Conviction and suspension	\$10,000	6 months	Darbepoetin Alfa Aminocaproic Acid
2011/12	1 breach	Conviction and fine	\$10,000		TCO2
2010/11	1 breach	Conviction and fine	\$8,000		Ipratropium
2011/12	1 breach	Fine	\$7,000		TCO2
2011/12	1 breach	Conviction, fine and suspension	\$6,000	12 months	TCO2
2011/12	1 breach	Conviction, fine and disqualification	\$3,000	6 months	Heptaminol
2010/11	1 breach	Conviction and fine	\$500		Didesmethyl-chlorpheniramine
2010/11	1 breach	Conviction and fine	\$500		Ranitidine
2011/12	1 breach	Conviction and suspension		6 months	TCO2
2011/12	1 breach	Conviction and disqualification		5 years	TCO2
2010/11	1 breach	Conviction and suspension		12 months	Aminocaproic

Year	Breach	Decision	Fine	Notes	Prohibited Substances
					Acid
2010/11	1 breach	Conviction and disqualification		12 months	Testosterone

Shading distinguishes the year within the reporting period.

338. During the two-year reporting period, 14 people were charged with 17 breaches of AHR 190(1) (*A horse shall be presented for a race free of prohibited substances*). Only one person received a penalty (fine) with no conviction. Eleven fines were issued, ranging from \$500 to \$10,000, with four fines of \$10,000 each. Five decisions resulted in suspensions and there were three disqualifications. Disqualifications and suspensions ranged from six months to five years.

**Table 11: HRV Penalties imposed for breaches of AHR 231(1)<sup>135</sup>**

Year	Breach	Decision	Fine	Notes
2011/12	1breach	Conviction and fine	\$1,000	
2011/12	1breach	Conviction and suspension		6 month suspension
2011/12	3 breaches	Conviction and suspension		4 month suspension
2011/12	1 breach	Conviction and fine	\$1,000	
2011/12	1 breach	Conviction and fine	\$1,000	
2011/12	1 breach	Conviction and fine	\$500	
2011/12	1 breach	Dismissed		
2011/12	1 breach	Conviction and suspension		6 month suspension, 3 months suspended
2010/11	1 breach	Severe reprimand		

Shading distinguishes the year within the reporting period.

339. Nine people were charged with a breach of AHR 231(1) resulting in 11 charges. One charge was dismissed and another person received a severe reprimand, while the remaining decisions resulted in a conviction

<sup>135</sup> AHR 231(1) A person shall not threaten, harass, intimidate, abuse, assault or otherwise interfere improperly with anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it

and fine or conviction and suspension. The majority of fines issued were \$1,000, while the suspensions varied between four months and six months.

### **Hearings**

**Table 12: HRV RAD Board hearing months**

<b>Month</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
March	0	0	11	48
April	0	0	4	18
May	4	21	2	8.5
June	0	0	2	8.5
July	3	16	0	0
August	0	0	2	8.5
September	0	0	0	0
October	4	21	0	0
November	2	10.5	0	0
December	3	16	0	0
January	1	5	2	8.5
February	2	10.5	0	0
	<b>19</b>	<b>100</b>	<b>23</b>	<b>100</b>

340. Twenty one per cent of serious charge hearings were heard in May and October in 2010/11 whereas in the following year, 48 per cent of hearings were heard in March. In the second year of reporting, very few hearings were heard between September and February.

### **Duration of Hearings**

341. The period between the date of the offence and the date of the hearing concluding averaged 48 business days. During the two-year reporting period, the length of a serious charge hearings averaged three hours and 33 minutes. Two hearings took in excess of six days to complete and increased the average hearing time significantly.

### ***RAD Board Panel Composition***

342. In 2010/11, the HRV RAD Board consisted of a Chair, Deputy Chair and 12 members. All members of the RAD Board sat on at least one serious charge hearing during the reporting period.

- (a) The Chairman sat on all 17 hearings
- (b) The Deputy Chairman sat on two hearings
- (c) Five of the 12 members sat on two hearings each
- (d) A further five members sat on three hearings each

343. In the 2011/12 reporting period:

- (a) The chairman sat on all 23 hearings
- (b) The deputy chairman and three members did not sit on any hearings
- (c) One member sat on one hearing
- (d) Six of the 12 members sat on two hearings each
- (e) The Chair and one particular member sat on 12 of the 23 hearings

### ***Use of Electronic Equipment***

344. In 2010/11, 84 per cent of serious charge hearings required the use of a laptop and microphone and/or a microphone and recording equipment. 10.5 per cent of hearings required a projector and laptop and a further 5.2 per cent required a conference telephone.

345. In 2011/12, 74 per cent of serious charge hearings required the use of recording equipment and microphones while a further 26 per cent of serious charge hearings required the use of a DVD player, television and recording equipment.

## Greyhound Racing Victoria Serious Offence Hearings

### **General Overview**

346. The GRV RAD Board presided over 53 serious charge hearings between 1 March 2010 and 28 February 2012. Twenty-three hearings were held in the first year (2010/11) and 30 hearings were heard in the second year (2011/12).
347. During the two-year period, 53 people including trainers, non-registered persons, owners and attendants were charged with 59 serious offences. The majority of people charged with a serious offence were trainers, 74 per cent in 2010/11 and 90 per cent in 2011/12.
348. The most common serious charge related to breaches of GAR 83 (2) (*Greyhound to be free of prohibited substances. The owner, trainer or person in charge of a greyhound (a) nominated to compete in an Event; (b) presented for a satisfactory, weight or whelping trial or other trial as provided for pursuant to these Rules; or (c) presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked shall present the greyhound free of any prohibited substance.*). It was the rule was the basis of 32 per cent of serious charges in 2010/11 and 65 per cent in 2011/12.
349. Further analysis of the charges involving prohibited substances identified 25 per cent involved Procaine and a further 25 per cent involved Heptaminol in the first year, whereas in the second year of reporting Procaine was detected in relation to only 9.5 per cent of serious offence charges involving prohibited substances and Heptaminol was not detected at all.
350. Just under half (48 per cent) of the persons charged with a serious offence in 2010/11 appeared on their own behalf, while the following year saw an increase of people appearing on their own behalf (73.5 per cent).
351. Forty four per cent of persons charged with serious offences pleaded guilty in 2010/11; 55.5 per cent pleaded guilty in 2011/12.



352. The RAD Board handed down a conviction and fine in 36 per cent of matters in 2010/11 and 50 per cent of matters in 2011/12.

353. Over the two-year period, the average time between the date of the offence and the date of the hearing was 30 business days. The average length of time it took to hear a matter was one hour and 40 minutes.

### ***Persons Charged***

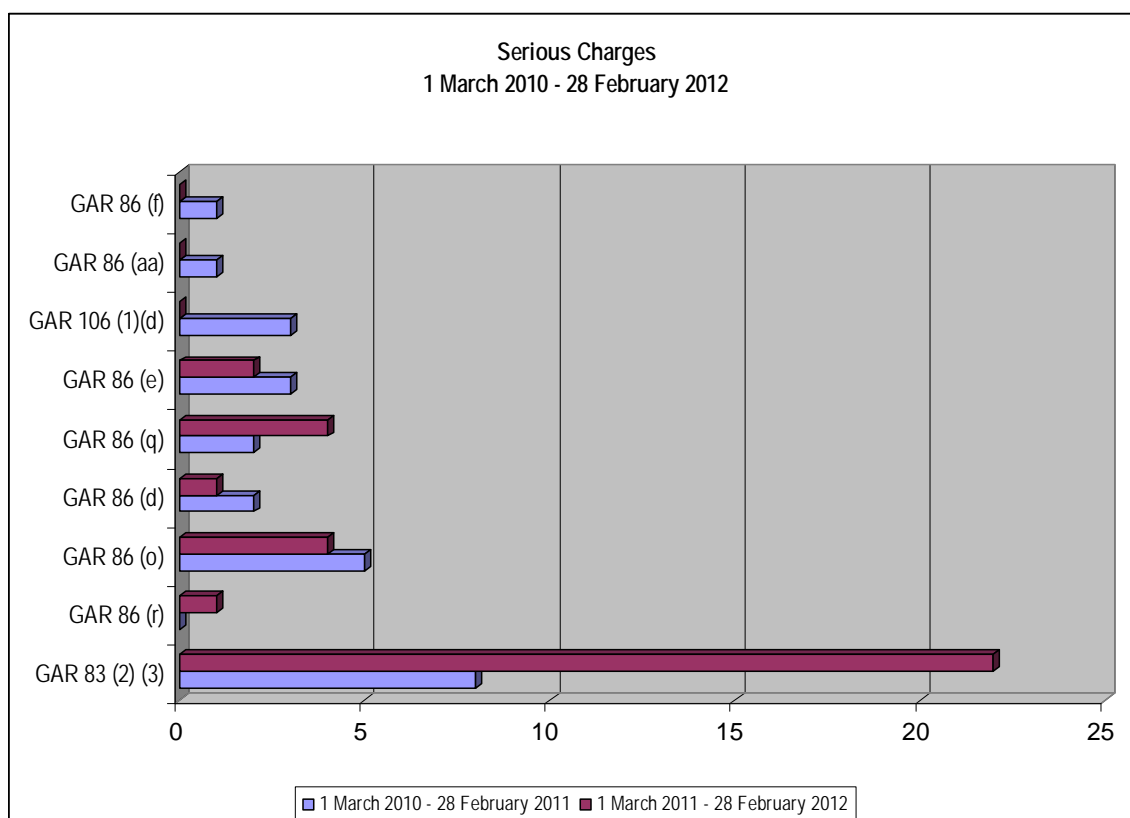
**Table 1: GRV Persons charged**

<b>Persons Charged</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Trainer	17	74	27	90
Not Registered	3	13	0	0
Attendant	1	4	0	0
Owner	2	9	3	10
	<b>23</b>	<b>100</b>	<b>30</b>	<b>100</b>

354. Between March 2010 and 28 February 2011, 23 people were charged with a serious offence. During the same period the following year, 30 people were charged with a serious offence.

355. The majority of people charged with a serious offence during the two-year reporting period were trainers, 74 per cent in 2010/11 and 90 per cent in 2011/12.

## Serious Charges



356. Twenty-five serious offence charges were recorded between 1 March 2010 and 28 February 2011 and 34 serious offence charges were recorded between 1 March 2011 and 28 February 2012.

357. Serious offences relating to five rules were represented in both years of reporting. GAR 83(2) (*The owner, trainer or person in charge of a greyhound; (a) nominated to compete in an event; (b) presented for a satisfactory weight or whelping trial or such other trial as provided for pursuant to these rules; or (c) presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked shall present the greyhound free of any prohibited substance.*) represented the highest number of serious offence charges, 32 per cent in 2010/11 and 65 per cent in 2011/12.

358. Other rules that were allegedly breached in both years of reporting include GAR 86(o), GAR 86(d), GAR 86(q) and GAR 86(e)<sup>136</sup>, each resulting in similar numbers of charges over the two-year period.

### ***Prohibited Substances***

**Table 2: GRV Prohibited substance charges**

<b>Charges</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Other charges	8	32	12	35
Prohibited substance related charges	17	68	22	65
	<b>25</b>	<b>100</b>	<b>34</b>	<b>100</b>

359. As a percentage of all serious offence charges, more prohibited substance related charges were issued in 2010/11 (68 per cent) than 2011/12 (65 per cent), even though there were more charges in total in 2011/12.

**Table 3: GRV Prohibited substances used**

<b>Prohibited Substances</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Dexamethasone	1	12.5	1	4.5
Flunixin	1	12.5	2	9.5
Procaine	2	25	2	9.5

<sup>136</sup> GAR 86 A person (including an official) shall be guilty of an offence if the person-

...

(d) being an owner, trainer, attendant or person having official duties in relation to greyhound racing, makes a false or misleading statement in relation to an investigation, examination, test or inquiry, or makes or causes to be made a falsification in a document in connection with greyhound racing or the registration of a greyhound;

(e) being an owner, trainer, attendant or person having official duties in relation to greyhound racing refuses or fails to attend or to give evidence or produce a document or other thing at an inquiry held pursuant these Rules when directed by the Controlling Body, Stewards or the committee of a club to do so;

...

(o) has, in relation to a greyhound or greyhound racing, done a thing or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;

...

(q) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing;

Prohibited Substances	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Heptaminol	2	25	0	0
Carprofen	1	12.5	0	0
Caffeine and its metabolites	1	12.5	3	13.5
Hyoscine	0	0	1	4.5
Diclofenac	0	0	1	4.5
Pholcodine	0	0	3	13.5
Methylsynephrine	0	0	1	4.5
Tolfenamic Acid	0	0	1	4.5
17methylmorphinan-3-ol	0	0	3	13.5
Ketoprofen	0	0	2	9.5
Benzoylcegonine	0	0	1	4.5
Lignocaine	0	0	1	4
	<b>8</b>	<b>100</b>	<b>22</b>	<b>100</b>

360. Dexamethason, Flunixin, Procaine, and caffeine and its metabolites were detected in both years of reporting.

361. In 2010/11, Procaine and Heptaminol represented 50 per cent of the prohibited substances detected, whereas in the following year caffeine and its metabolites, Pholcodine and 17methylmorphinan-3-ol each represented 13.5 per cent of the detected prohibited substances.

### ***Representation***

**Table 4: GRV RAD Board representation**

Representation	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Representation	8	35	5	16.5
Did not attend	4	17	3	10
Appeared on their own behalf	11	48	22	73.5
	<b>23</b>	<b>100</b>	<b>30</b>	<b>100</b>

362. Nearly half (48 per cent) of the people charged with a serious offence in 2010/11 appeared on their own behalf, whereas in 2011/12, a large majority of people (73.5 per cent) appeared on their own behalf.

### ***Plea***

**Table 5: GRV RAD Board pleas**

<b>Plea</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Not guilty	10	40	10	29.5
Guilty	11	44	19	55.5
No Plea Entered	4	16	5	15
	<b>25</b>	<b>100</b>	<b>34</b>	<b>100</b>

363. The majority of people charged with a serious offence during the two-year reporting period pleaded guilty. Just under half the people charged with a serious offence pleaded guilty in 2010/11 (44 per cent) and just over half (55.5 per cent) in 2011/12.

### ***Decisions***

**Table 6: GRV RAD Board charges proven or dismissed**

<b>Decisions</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Proven	23	92	33	100
Dismissed	2	8	0	0
	<b>25</b>	<b>100</b>	<b>33</b>	<b>100</b>

364. In the first year of the reporting period, 92 per cent of charges were proven. In the second year, 100 per cent of charges that were adjudicated were proven but one charge was withdrawn by the Stewards at the hearing.

**Table 7: GRV RAD Board penalties**

<b>Penalties</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Conviction and fine	9	36	17	52
Fine only	1	4	0	0
Conviction and fine and suspension and/or disqualification	3	12	0	0
Conviction and suspension and/or disqualification	2	8	15	45
Suspension and/or disqualification only	0	0	0	0
Conviction only	0	0	0	0
Conviction and severe reprimand	3	12	1	3
Severe reprimand	1	4	0	0
Dismissed	2	8	0	0
Warned off and fine	2	8	0	0
Warned off	2	8	0	0
	<b>25</b>	<b>100</b>	<b>33</b>	<b>100</b>

365. Thirty six per cent of decisions handed down by the RAD Board resulted in a conviction and fine in 2010/11 and 50 per cent in 2011/12.

366. In 2010/11, there was greater variation in the types of penalties imposed compared to the following year. In the 2011/12 reporting period, a significant number of people (45 per cent) received a conviction and suspension and/or disqualification, while only 8 per cent received the same penalty in the previous year.

**Table 8: GRV RAD Board fines imposed**

<b>Fine</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
\$10,000	1	7.5	0	0
\$5,000	1	7.5	0	0
\$4,000	1	7.5	1	6

Fine	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
\$3,000	0	0	1	6
\$2,500	2	15.5	0	0
\$1,000	1	7.5	1	6
\$750	0	0	3	17.5
\$500	3	23	7	41
\$300	0	0	1	6
\$250	4	31	2	12
\$200	0	0	1	6
	<b>13</b>	<b>100</b>	<b>17</b>	<b>100</b>

367. The majority of penalties issued during the reporting period involved fines. Thirty one per cent of fines issued in the 2010/11 period were fines of \$2,500, whereas in the following year no \$2,500 fines were issued. In 2011/12, the most common fine was \$500, followed by fines of \$750.

**Table 9: GRV Penalties imposed for breaches of GAR 83(2)**

Year	Breach	Decision	Fine	Notes	Prohibited Substance
2010/11	1 breach	Conviction and fine	\$2,500		Dexamethasone
2010/11	1 breach	Conviction and fine	\$2,500		Flunixin
2010/11	1 breach	Conviction and fine	\$4,000		Procaine
2011/12	1 breach	Conviction and fine	\$4,000		Ketoprofen
2011/12	1 breach	Conviction and fine	\$3,000		Ketoprofen
2011/12	1 breach	Conviction and fine	\$1,000		Procaine
2011/12	1 breach	Conviction and fine	\$1,000		Flunixin
2011/12	2 breaches	Conviction and fine Conviction and fine	\$750		Pholcodine
2011/12	1 breach	Conviction and fine	\$750		Tolfenamic Acid
2010/11	1 breach	Conviction and fine	\$500		Carprofen
2010/11	1 breach	Conviction and fine	\$500		Procaine

Year	Breach	Decision	Fine	Notes	Prohibited Substance
2011/12	1 breach	Conviction and fine	\$500		Procaine
2011/12	1 breach	Conviction and fine	\$500		17methylmorphinan-3-ol
2011/12	1 breach	Conviction and fine	\$500		17methylmorphinan-3-ol
2011/12	1 breach	Conviction and fine	\$500		Pholcodine
2011/12	1 breach	Conviction and fine	\$500		Hyoscine
2011/12	1 breach	Conviction and fine	\$500		Lignocaine
2011/12	1 breach	Conviction and disqualification		18 months	Benzoylcegonine
2011/12	1 breach	Conviction and disqualification		9 months	17methylmorphinan-3-ol
2011/12	1 breach	Conviction and suspension		6 months	Flunixin
2010/11	1 breach	Conviction and disqualification		5 months	Caffeine
2011/12	1 breach	Conviction and disqualification		5 months	Caffeine & Theobromine
2011/12	1 breach	Conviction and disqualification		4 months	Methyl synephrine
2011/12	2 breaches	Conviction and disqualification Conviction and disqualification		3 months 6 months (3 months concurrent)	Caffeine & Theobromine
2010/11	1 breach	Conviction and disqualification		3 months	Heptaminol
2010/11	1 breach	Conviction and disqualification		3 months	Heptaminol
2011/12	1 breach	Conviction and suspension		1 month	Dexamethasone
2011/12	1 breach	Conviction and suspension		1 month	Diclofenac

Shading distinguishes the year within the reporting period.

368. During the two-year reporting period, 28 people were convicted of breaching GAR 83(2) (*The owner, trainer or person in charge of a greyhound ... shall present the greyhound free of any prohibited substance.*) and were handed a variety of penalties by the RAD Board.



The majority of people (60 per cent) received a conviction and fine, 30 per cent received a conviction and disqualification, while a further 10 per cent (three people) received a conviction and suspension.

**Table 10: GRV Penalties imposed for breaches of GAR 86(o)<sup>137</sup>**

Year	Breach	Decision	Fine	Notes
2010/11	1 breach	Warned off and fine	\$10,000	
2010/11	1 breach	Conviction, fine and disqualification	\$5,000	3 months
2011/12	1 breach	Conviction and fine	\$250	
2010/11	1 breach	Conviction and fine	\$250	
2010/11	1 breach	Conviction and disqualification		1 month
2011/12	1 breach	Conviction and disqualification		3 months
2011/12	1 breach	Conviction and disqualification		3 months
2010/11	1 breach	Conviction and suspension		1 month
2011/12	1 breach	Withdrawn by Stewards		

Shading distinguishes the year within the reporting period.

369. Nine people were charged with a breach of GAR 86(o) over the two-year reporting period. During this time, one person was warned off and received a fine of \$10,000, while another person received a conviction, fine and disqualification. A further two people received a conviction and fine of \$250.

<sup>137</sup> GAR 86 A person (including an official) shall be guilty of an offence if the person ... (o) has, in relation to a greyhound or greyhound racing, done a thing or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct

**Hearings****Table 11: GRV RAD Board hearings by month**

<b>Month</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
March	0	0	1	3.5
April	0	0	2	6.5
May	1	4.5	6	20
June	0	0	2	6.5
July	3	13	0	0
August	5	22	1	3.5
September	0	0	5	17
October	2	8.5	6	20
November	2	8.5	1	3.5
December	3	13	4	13
January	2	8.5	0	0
February	5	22	2	6.5
	<b>23</b>	<b>100</b>	<b>30</b>	<b>100</b>

370. During 2010/11 period, 22 per cent of hearings were held in August and a further 22 per cent were held in February, whereas in the following year, 20 per cent of hearings were held in May and a further 20 per cent in October.

**Duration of Hearings**

371. Over the two-year period, the period between the date of the charge being issued and the date of the hearing averaged 30 business days. Ten cases took between 40 and 50 days (between the date the charge was issued and the date of the hearing) while another case took 72 days.

372. During the two-year reporting period, the length of a serious charge hearing averaged one hour and 40 minutes.

### ***RAD Board Panel Composition***

373. In 2010/11, the GRV RAD Board consisted of a Chair, Deputy Chair and nine members. During this time, only one member of the RAD Board did not sit on a serious charge hearing.

- (a) The Chairman sat on 15 of the 23 hearings
- (b) The Deputy Chairman sat on 20 hearings
- (c) Four of the nine members sat on three hearings each

374. In 2011/12, the GRV RAD Board continued to consist of a Chair, Deputy Chair and nine members. During this time, only one member of the RAD Board did not sit on a serious charge hearing.

- (a) The Chairman sat on 26 of the 30 hearings
- (b) The Deputy Chairman sat on all hearings
- (c) Two of the nine members sat on four hearings each

### ***Use of Electronic Equipment***

375. Serious charge hearings did not require additional electronic equipment during the two-year reporting period.

### **Appeals - Statistical Overview**

376. In the two-year reporting period, the highest number of appeals lodged with a RAD Board was in harness racing, with 83 appeals being lodged. The RVL RAD Board recorded 65 appeals and the GRV RAD Board recorded 46 during the reporting period.
377. Similar numbers of appeals were withdrawn in each code during the reporting period (between three and six appeals per year). However, in the 2011/12 reporting period, HRV was above this average, with nine appeals being withdrawn. Six appeals were lodged out of time and subsequently withdrawn, two appeals were withdrawn with the reason unknown, and one appeal was withdrawn following review of footage of the race.
378. The average length of time for appeals to be heard by the RAD Boards showed some variation. RVL RAD Board appeals were heard most expeditiously during the two-year reporting period, requiring on average three business days to be fully determined. The HRV RAD Board generally took between 11 and 12 business days to hear matters during the reporting period, and the GRV RAD Board required 19 business days to hear appeal matters in the first year of its operation. In the second year, the total time required for an appeal to be heard and determined by the GRV RAD Board had decreased to 10 business days.
379. The duration of RAD Board hearings also varied, with the HRV RAD Board being the quickest to hear matters, requiring on average 43 minutes in the first year of reporting, and 51 minutes in the second reporting period. RVL RAD Board appeal hearings took an average of one hour and three minutes in the first year and one hour and 10 minutes during the second year. GRV RAD Board appeal hearings took the most time, on average one hour and 34 minutes in the first year of reporting and one hour and 20 minutes in the second year.
380. Some variation was recorded between the RAD Boards as to the overall proportion of appeals that were allowed. The percentage of decisions that were overturned on appeal for the two-year period ranged from 18 per cent

for the GRV RAD Board to 23.5 per cent for both RVL and HRV RAD Boards. In relation to the severity of penalty, appeals were allowed by the RVL RAD Board in 65.5 per cent of matters, the HRV RAD Board allowed 70 per cent of appeals on severity of penalty and the GRV RAD Board allowed only 31 per cent of appeals in respect of penalty

## RAD Board Appeal Hearings (1 March 2010 – 28 February 2012)

### Codes Comparison Table

RVL Appeals		HRV Appeals		GRV Appeals	
Mar 2010 – Feb 2011	Mar 2011 – Feb 2012	Mar 2010 – Feb 2011	Mar 2011 – Feb 2012	Mar 2010 – Feb 2011	Mar 2011 – Feb 2012
<b>RVL - Appeals Lodged</b>		<b>HRV - Appeals Lodged</b>		<b>GRV - Appeals Lodged</b>	
28	35	36	47	24	22
<b>RVL - Appeals Withdrawn</b>		<b>HRV - Appeals Withdrawn</b>		<b>GRV - Appeals Withdrawn</b>	
5	6	3	10	3	4
<b>RVL - Appeals Heard</b>		<b>HRV - Appeals Heard</b>		<b>GRV - Appeals Heard</b>	
23	29	33	37	21	18
<b>RVL - Hearings by Month (Highest Number)</b>		<b>HRV - Hearings by Month (Highest Number)</b>		<b>GRV - Hearings by Month (Highest Number)</b>	
28.5% - August 18% - November 14.5% - October 14.5% - January	16% - September 13% - August 13% - October 13% - December 13% - January	21% - August 12.5% - July 12.5% - July	18.5% - September 15% February 13% - March	24% - August 19% - April 14% - May	33% - August 22.5% - September 16.5% - May
<b>RVL - Reason for Appeal</b>		<b>HRV - Reason for Appeal</b>		<b>GRV - Reason for appeal</b>	
30.5% - severity of penalty 69.5% - decision and severity of penalty	35.5% - severity of penalty 64.5% - decision and severity of penalty	27% - severity of penalty 73% - decision and severity of penalty	16% - severity of penalty 84% - decision and severity of penalty	5% - severity of penalty 95% - decision and severity of penalty	28% severity of penalty 72% - decision and severity of penalty

RVL Appeals		HRV Appeals		GRV Appeals	
RVL - Stay of Proceedings		HRV - Stay of Proceedings		GRV - Stay of Proceedings	
30.5% - granted 69.5% - did not request / require	29% - granted 71% - did not request / require	79% - granted 18% - did not request/ require 3% - opposed by Stewards	60.5% - granted 39.5% - did not request/ require	48% - granted 52% - did not request / require	55.5% - granted 39% - did not request /require 5.5% - refused a stay
RVL - Representation at Hearing		HRV - Representation at Hearing		GRV - Representation at Hearing	
17% - appeared on their own behalf 83% - representation (legal and other)	42% - appeared on their own behalf 58% - representation (legal and other)	66.5% - appeared on their own behalf 33.5% - representation (legal and other)	58% - appeared on their own behalf 42% - representation (legal and other)	76% - appeared on their own behalf 24% - representation (legal and other)	66.5% - appeared on their own behalf 33.5% - representation (legal and other)
RVL – Length of Appeal Hearing (Average)		HRV - Length of Appeal Hearing (Average)		GRV - Length of Appeal Hearing (Average)	
1 hour, 3 minutes	1 hour, 10 minutes	43 minutes	51 minutes	1 hour, 34 minutes	1 hour, 20 minutes
RVL - Length of time between lodgement of appeal and Hearing		HRV - Length of time between lodgement of appeal and Hearing		GRV - Length of time between lodgement of appeal and Hearing	
3 business days	3 business days	12 business days	11 business days	19 business days	10 business days
RVL - Appeals against Charges		HRV - Appeals against Charges		GRV - Appeals against Charges	
86% - AR 137 (a)	72% - AR 137 (a)	41% - AHR 163(1)(a) 20% - AHR149 (1) A	38.5% - AHR 163(1)(a) 38.5% - AHR 149 (1)	33% - GAR 69 (1)(b) 24% - GAR 69 (5) 14% GAR 69 (1)(a)	42% - GAR 69 (1)(b) 16% - GAR 86 (o) 16% - GAR 104 (6)(c)

RVL Appeals		HRV Appeals		GRV Appeals	
RVL - RAD Board Decision		HRV - RAD Board Decision		GRV - RAD Board Decision	
Appeals against decision: 87.5% of appeals dismissed 12.5% of appeals allowed	Appeals against decision: 68.5% of appeals dismissed 31.5% of appeals allowed	Appeals against decision: 75% of appeals dismissed 25% of appeals allowed	Appeals against decision: 77.5% of appeals dismissed 22.5% of appeals allowed	Appeals against decision: 80% of appeals dismissed 20% of appeals allowed	Appeals against decision: 84.5% of appeals dismissed 15.5% of appeals allowed
Appeals against severity of penalty: 33.5% of appeals dismissed 66.5% of appeals allowed	Appeals against severity of penalty: 48% of appeals dismissed 52% of appeals allowed	Appeals against severity of penalty: 41% of appeals dismissed 59% of appeals allowed	Appeals against severity of penalty: 33.5% of appeals dismissed 66.5% of appeals allowed	Appeals against severity of penalty: 82.5% of appeals dismissed 17.5% of appeals allowed	Appeals against severity of penalty: 81% of appeals dismissed 19% of appeals allowed



## Racing Victoria Limited Appeal Hearings

### *General Overview*

381. The RVL RAD Board presided over 54 appeals between 1 March 2010 and 28 February 2012. During this period, 65 appeals were lodged and 11 appeals were withdrawn. Trainers, jockeys, picnic jockeys, apprentice jockeys and stable employees lodged appeals during this time.
382. The majority of appellants appealed against both the decision and severity of penalty, 70 per cent in 2010/11 and 64.5 per cent in 2011/12.
383. In 2010/11, 86 per cent of appeals related to AR 137(a) (*Any rider may be penalised if, in the opinion of the Stewards, he is guilty of careless, reckless, improper, incompetent or foul riding*), while 72 per cent related to AR 137(a) in 2011/12.
384. Most appellants did not request or require a stay of proceedings during the two year period, while 30.5 per cent and 29 per cent were granted a stay in 2010/11 and 2011/12 respectively.
385. In 2010/11, the Victorian Jockeys' Association (VJA) Chief Executive represented 61 per cent of appellants, 17 per cent appeared on their own behalf and the remainder had other representation. In 2010/12, there was an increase in the number of appellants appearing on their own behalf (42 per cent) and fewer appellants were represented by the VJA Chief Executive (32 per cent).
386. In 2011/12 more appeals against decisions were allowed, while the proportion of appeals against penalty that were allowed declined slightly compared with 2010/11.
387. The time between the lodgement of an appeal and the date of the hearing between 2010/11 and 2011/12 was unchanged, averaging three business days. On average, hearings concluded in one hour and three minutes in 2010/11 and one hour and ten minutes in 2011/12.

**Appellants****Table 1: RVL Appellants**

<b>Appellants</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Jockey	20	71	23	66
Apprentice Jockey	5	18	5	14
Picnic Jockey	1	4	1	3
Trainer	2	7	4	11
Stable employee	0	0	2	6
	<b>28</b>	<b>100</b>	<b>35</b>	<b>100</b>

388. Between 1 March 2010 and 28 February 2011, 28 appeals were lodged, five appeals were withdrawn and 23 appeals were heard and determined. Seventy one per cent of appeals lodged were from jockeys, followed by apprentice jockeys (18 per cent). Four appellants have each appealed on two occasions.

389. Between 1 March 2011 and 28 February 2012, 35 appeals were lodged, six appeals were withdrawn and 29 appeals were heard and determined. The majority of appeals were lodged by jockeys (65 per cent) followed by apprentice jockeys (16 per cent). Four appellants have each appealed on two occasions each.

**Appeals Withdrawn**

390. During 2010/11, two appellants withdrew appeals on legal advice, one appellant withdrew on further advice (of being unsuccessful) and a further appellant withdrew due to commitments at riding trials and another due to injury.

391. During 2011/12, two appeals were withdrawn on legal advice, one was withdrawn after the review of race-day footage, another appellant withdrew due to the horse going 'amiss'. One appeal was withdrawn as it was out of

time and one was withdrawn, reason unknown.

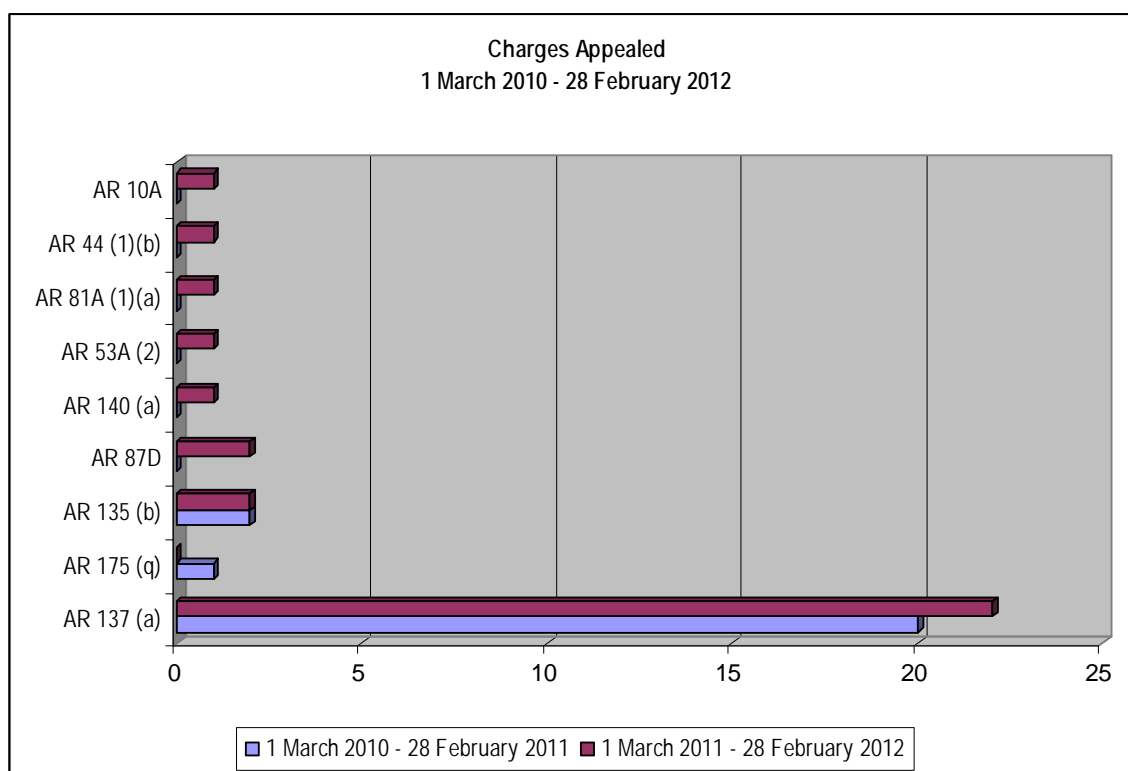
### ***Basis of the Appeal***

**Table 2: RVL Appeals**

Appeal Against	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Decision and severity of penalty	16	69.5	18	62
Severity of penalty	7	30.5	11	38
	<b>23</b>	<b>100</b>	<b>29</b>	<b>100</b>

392. The proportion of appellants appealing both the decision and severity of a penalty is comparable during the two-year reporting period. In 2010/11, 69.5 per cent of appellants appealed against the decision and severity of the penalty and 30.5 per cent appealed against the severity of the penalty. In the second year, the majority of appellants (62 per cent) appealed against the decision and severity of the penalty and 38 per cent appealed against the severity of the penalty only.

### ***Charges Appealed***



393. The 2010/11 period saw 23 appeals relating to three rules, whereas in the 2011/12 period, there were 29 appeals relating to eight rules.

394. The majority of appeals lodged during the two year period relate to AR 137(a) (*any rider may be penalised if, in the opinion of the Stewards, he is guilty of careless, reckless, improper, incompetent or foul riding*).

395. The other rule breach appealed in both years of reporting related to AR 135(b) (*the rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field*). The decision regarding this rule was the basis of seven per cent of appeal hearings in both 2010/11 and 2011/12.

### **Stay of Proceedings**

**Table 3: RVL Stays of proceedings**

Stay of Proceedings	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Granted a stay of proceedings	7	30.5	9	31
A stay of proceedings was not requested or required	16	69.5	20	69
	<b>23</b>	<b>100</b>	<b>29</b>	<b>100</b>

396. The majority of appellants did not require or request a stay of proceedings during the two-year reporting period. A stay was granted to those appellants who requested one.

## Representation

**Table 4: RVL Representation**

Representation	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Represented by VJA Chief Executive	14	61	10	32
Appeared on their own behalf	4	17	13	42
Representation	5	22	8	26
	<b>23</b>	<b>100</b>	<b>31</b>	<b>100</b>

397. During 2010/11, the VJA Chief Executive represented 61 per cent of appellants and only 32 per cent of appellants in 2011/12.

398. The number of appellants appearing on their own behalf increased significantly in the 2011/12 period, while the number of appellants who appear with representation is comparable.

## Decision

**Table 5: RVL Appeals against decision**

Decision	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Appeal against decision allowed	2	12.5	6	31.5
Appeal against decision dismissed	14	87.5	13	68.5
	<b>16</b>	<b>100</b>	<b>19</b>	<b>100</b>

399. The figures indicate that the RVL RAD Board is significantly more likely than not to refuse to overturn the original decision made by the Stewards, although the proportion of matters where the decision was overturned increased to a third of appeals in 2011/12.

**Table 6: RVL Appeals against severity of penalty**

Decision	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Appeal against severity of penalty allowed	14	66.5	12	52
Appeal against severity of penalty dismissed	7	33.5	11	48
	<b>21</b>	<b>100</b>	<b>23</b>	<b>100</b>

These figures include matters where both the decision and the penalty were appealed and the appeal on decision was dismissed, as well as matters where only the penalty was appealed. Matters where the appeal on decision was allowed are not included.

400. In contrast to the figures on appeals regarding Stewards' decisions, the RVL RAD Board is more likely than not to amend penalties in response to appeals regarding severity. Over the two-year reporting period, appeals on penalty were allowed in 59 per cent of matters.

### ***Appeal Hearings by Month***

**Table 7: RVL RAD Board hearings by month**

Month	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
March	1	3.5	3	9.5
April	0	0	1	3
May	1	3.5	2	7
June	1	3.5	3	9.5
July	2	7	1	3
August	8	28.5	4	13
September	0	0	5	16
October	4	14.5	4	13
November	5	18	0	0
December	1	3.5	4	13

Month	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
January	4	14.5	4	13
February	1	3.5	0	0
	<b>28</b>	<b>100</b>	<b>31</b>	<b>100</b>

401. In 2010/11, 28.5 per cent of appeals were heard in August and in 2011/12, 16 per cent of hearings were held in September.

402. No appeal hearings were heard in the months of April, and September 2010/2011, and no hearings were held in November and February 2011/12.

### ***Duration of Appeal Hearing***

403. In 2010/11, the average length of time between the lodgement of an appeal and a hearing was three business days, with an average of one hour and three minutes for each hearing.

404. In 2011/12, the length of time between lodging an appeal and the hearing date averaged three business days, with an average of one hour and 10 minutes for each hearing.

### ***RAD Board Panel Composition***

405. In 2010/11, the RVL RAD Board consisted of a Chair, Deputy Chair and 12 members.

- (a) The Chairman sat on 21 of the 23 hearings
- (b) The Deputy Chairman sat on four hearings
- (c) All members of the board sat on at least one hearing

406. During the reporting period, there was diversity in the composition of the RAD Board panels; only three hearings were heard and determined by the

same panel of members.

407. In the 2011/12 reporting period, two members retired and on 1 August 2011 three new members were appointed.

- (a) The Chairman sat on 26 of the 29 hearings
- (b) The Deputy Chairman sat on six hearings
- (c) All members of the board, except one outgoing member, sat on at least one hearing.

408. During the reporting period, the majority of hearings consisted of a mix of members. Five members sat on two hearings each with the same panel members.

## **Harness Racing Victoria Appeal Hearings**

### ***General Overview***

409. The HRV RAD Board presided over 70 appeals between 1 March 2010 and 28 February 2012. During this period, 83 appeals were lodged and 13 appeals were withdrawn. Drivers and trainers lodged appeals during this time.

410. The majority of appellants appealed against the decision and severity of the penalty, 73 per cent in 2010/11 and 84 per cent in 2011/12.

411. During the two-year period, the majority of appeals related to AHR 163(1)(a) (*a driver shall not cause or contribute to any crossing, jostling or interference*) and AHR 149(1) (*A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field*).

412. Seventy nine per cent of appellants were granted a stay of proceedings in 2010/11 and 60.5 per cent in 2011/12. 2011/12 saw an increase in the number of appellants who did not require a stay of proceedings.



413. In 2010/11 and 2011/12, the majority of appellants appeared on their own behalf.

414. Over the two-year reporting period, the RAD Board dismissed a similar number of appeals against the decision and a comparable number of appeals against the severity of the penalty.

415. The time between the lodgement date (of an appeal) and the date of the hearing averaged 12 business days and took 43 minutes to finalise in 2010/11. In 2011/12, the average time to hearing was 11 business days and each hearing averaged 51 minutes in duration.

### ***Appellants***

**Table 1: HRV Appellants**

<b>Appellants</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Driver	32	89	47	100
Trainer	4	11	0	0
	<b>36</b>	<b>100</b>	<b>47</b>	<b>100</b>

416. Between 1 March 2010 and 28 February 2011, 36 appeals were lodged, three appeals were withdrawn and 33 appeals were heard and determined. During this period, drivers lodged the majority of appeals (89 per cent), followed by trainers (11 per cent). Four appellants appealed multiple times during the reporting period (one appealed on two occasions and three appealed on three occasions).

417. Between 1 March 2011 and 28 February 2012, 47 appeals were lodged, ten appeals were withdrawn and 37 appeals were heard and determined. Only drivers lodged appeals and nine appellants appealed multiple times. Six appellants appeals on two occasions each, two appellants appealed on three occasions and one appellant appealed on four occasions.

**Appeals Withdrawn**

418. During 2010/11, three appeals were withdrawn before the hearing. On two occasions, the reason for withdrawing an appeal was unknown and one appeal was withdrawn due to the 'horse going amiss'.

419. During 2011/12, nine appeals were withdrawn before the hearing. Six appeals were lodged out of time and subsequently withdrawn, two appeals were withdrawn with the reason unknown and one appeal was withdrawn after reviewing footage of the race. One additional appeal was withdrawn at the hearing.

**Basis of the Appeal****Table 2: HRV Appeals**

	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
<b>Appeal Against</b>				
Decision and severity of penalty	24	73	31	84
Severity of penalty	9	27	6	16
	<b>33</b>	<b>100</b>	<b>37</b>	<b>100</b>

420. Seventy three per cent of appellants appealed against both the decision and severity of a penalty and 27 per cent appealed against the severity of the penalty in the first year of reporting. In the second year, the majority of appellants (84 per cent) appealed against both the decision and severity of the penalty and only 16 per cent appealed against the severity of the penalty alone.

**Charges Appealed**

Charges Appealed	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
AHR 163(1)(a)	14	41	15	38.5
AHR 149(1)	7	20	15	38.5
AHR149(2)	3	9	6	15.5
AHR 231(2)	2	6	0	0
AHR 156(3)(b)	0	0	1	2.5
AHR 168(1)	0	0	1	2.5
AHR 167(2)	0	0	1	2.5
AHR 156(2)	1	3	0	0
AHR162(1)(www)	1	3	0	0
AHR167(2)	1	3	0	0
AHR 273(1)	1	3	0	0
AHR 183(d)	2	6	0	0
AHR 273(7)	1	3	0	0
AHR163(1)(c )	1	3	0	0
	<b>34</b>	<b>100</b>	<b>39</b>	<b>100</b>

421. In 2010/11, 41 per cent of appeals lodged related to AHR 163(1)(a) (*A driver shall not cause or contribute to any crossing, jostling or interference*) followed by appeals relating to AHR 149(1) (*A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field*) (20 per cent). A further nine per cent appealed the charge in relation to AHR 149(2) (*A person should not drive in a manner which in the opinion of the Stewards is unacceptable*).

422. In 2011/12, 38.5 per cent of appeals related to AHR 163(1)(a). A further 15.5 per cent appealed in relation to AHR 149(2).

**Stay of Proceedings****Table 3: HRV Stays of proceedings**

<b>Stay of Proceedings</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Granted a stay of proceedings	26	79	23	60.5
A stay of proceedings was not requested or required	6	18	15	39.5
Stay opposed by Stewards	1	3	0	0
	<b>33</b>	<b>100</b>	<b>38</b>	<b>100</b>

423. In 2010/11, the majority of appellants (79 per cent) were granted a stay of proceedings, 18 per cent did not request a stay and one request for a stay of proceedings (2.5 per cent) was opposed by the Stewards. In the following year, 60.5 per cent of appellants were granted a stay while more appellants (39.5 per cent) than in the previous year did not request a stay.

**Representation****Table 4: HRV Representation**

<b>Representation</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Appeared on their own behalf	22	66.5	22	58
Representation	11	33.5	16	42
	<b>33</b>	<b>100</b>	<b>38</b>	<b>100</b>

424. The majority of appellants continue to represent themselves, 66.5 per cent in 2010/11 and 58 per cent in 2011/12, however the 2011/12 period saw a 25 per cent increase in the number of appellants using representation.

**Decision****Table 5: HRV Appeals against decision**

<b>Decision</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Appeal against decision allowed	6	25	7	22.5
Appeal against decision dismissed	18	75	24	77.5
	<b>24</b>	<b>100</b>	<b>31</b>	<b>100</b>

425. The figures indicate that the HRV RAD Board is significantly more likely than not to refuse to overturn the original decision made by the Stewards. Less than a quarter of appeals on decision were allowed in the two-year period.

**Table 6: HRV Appeals against severity of penalty**

<b>Decision</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Appeal against severity of penalty allowed	16	59	20	66.5
Appeal against severity of penalty dismissed	11	41	10	33.5
	<b>27</b>	<b>100</b>	<b>30</b>	<b>100</b>

These figures include matters where both the decision and the penalty were appealed and the appeal on decision was dismissed, as well as matters where only the penalty was appealed. Matters where the appeal on decision was allowed are not included.

426. In contrast to the figures on appeals regarding Stewards' decisions, the HRV RAD Board is more likely than not to amend penalties in response to appeals regarding severity. Over the two-year reporting period, appeals on penalty were allowed in 63 per cent of matters.

**Appeal Hearings by Month****Table 7: HRV RAD Board hearings by month**

Month	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
March	1	3	5	13
April	3	9	2	5.5
May	1	3	2	5.5
June	3	9	4	10
July	4	12.5	3	8
August	7	21	0	0
September	1	3	7	18.5
October	2	6	3	8
November	2	6	2	5.5
December	3	9	2	5.5
January	2	6	2	5.5
February	4	12.5	6	15
	<b>33</b>	<b>100</b>	<b>38</b>	<b>100</b>

427. In 2010/11, appeal hearings were spread across the 12-month period, with 21 per cent of appeals being heard in August, while 18.5 per cent were heard in September the following year.

**Duration of Appeal Hearing**

428. In 2010/11, the average length of time between the lodgement of an appeal and a hearing was 12 business days, with an average of 43 minutes for each hearing.

429. In the 2011/12 period, the average length of time between lodging an appeal and hearing was 11 business days, with an average of 51 minutes for each hearing.

### ***RAD Board Panel Composition***

430. In 2010/11, the HRV RAD Board consisted of a Chair, Deputy Chair and 12 members.

- (a) The Chairman sat on 28 of the 33 hearings
- (b) The Deputy Chairman sat on six hearings
- (c) One member sat on nine hearings
- (d) Two members sat on four hearings each
- (e) Six members did not sit on an appeal hearing during this period

431. In 2011/12, the HRV RAD Board consisted of a Chair, Deputy Chair and 12 members.

- (a) The Chairman sat on all 37 appeal hearings
- (b) The Deputy Chairman did not sit on any appeal hearings
- (c) One member sat on 16 hearings
- (d) Three members sat on four hearings each
- (e) Four members did not sit on an appeal hearing

### **Greyhound Racing Victoria Appeal Hearings**

#### ***General Overview***

432. The GRV RAD Board presided over 39 appeals between 1 March 2010 and 28 February 2012. During this period, 46 appeals were lodged and seven were withdrawn. Trainers, persons not registered, attendants, kennel supervisors, club judges, club starters, club officials and catchers lodged appeals during this time.

433. The majority of appellants appealed against both the decision and severity of penalty, 95 per cent in 2010/11 and 72 per cent in 2011/12.

434. During the two year period, breaches of GAR 69(1)(b) (*Where a*

*greyhound, in the opinion of the Stewards fails to pursue the lure with due commitment during an Event)* were the decisions most commonly appealed.

435. In 2010/11, just over half of appellants (52 per cent) did not request a stay of proceedings, while 39 per cent did not request a stay of proceedings in 2011/12.

436. In both reporting periods, the majority of appellants appeared on their own behalf, although 2011/12 saw an increase in the number of appellants attending with representation.

437. In each year of the two-year reporting period, the RAD Board dismissed a similar number of appeals against decision and severity.

438. In 2010/11, the time between the lodgement date of an appeal and the date of the hearing averaged 19 business days and hearings took one hour and 34 minutes on average. In 2011/12, the average time to hearing was 10 business days and the length of an appeal hearing averaged one hour and 20 minutes.

### ***Appellants***

**Table 1: GRV Appellants**

<b>Appellants</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Trainer	21	87.5	15	68.5
Not registered	2	8.5	0	0
Attendant	1	4	1	4.5
Kennel supervisor	0	0	1	4.5
Club judge	0	0	1	4.5
Club starter	0	0	1	4.5
Club official	0	0	1	4.5
Parade steward	0	0	1	4.5



	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
<b>Appellants</b>				
Catcher	0	0	1	4.5
	<b>24</b>	<b>10</b>	<b>22</b>	<b>100</b>

439. Between 1 March 2010 and 28 February 2011, 24 appeals were lodged, three appeals were withdrawn and 21 appeals were heard and determined. One trainer appealed on two occasions. During this period, trainers lodged the majority of appeals (87.5 per cent).

440. Between 1 March 2011 and 28 February 2012, 22 appeals were lodged, four appeals were withdrawn and 18 appeals were heard and determined. One trainer appealed on two occasions.

### ***Appeals Withdrawn***

441. During the 2010/11 reporting period, three appeals were withdrawn. In one case, the reason for the withdrawal was not recorded, one appeal was out of time and later withdrawn and another appeal was under the threshold and withdrawn.

442. During the 2011/12 period, four appeals were withdrawn. One appeal was out of time and subsequently withdrawn, one appeal was under the threshold and the reasons for the remaining two withdrawals are not recorded.

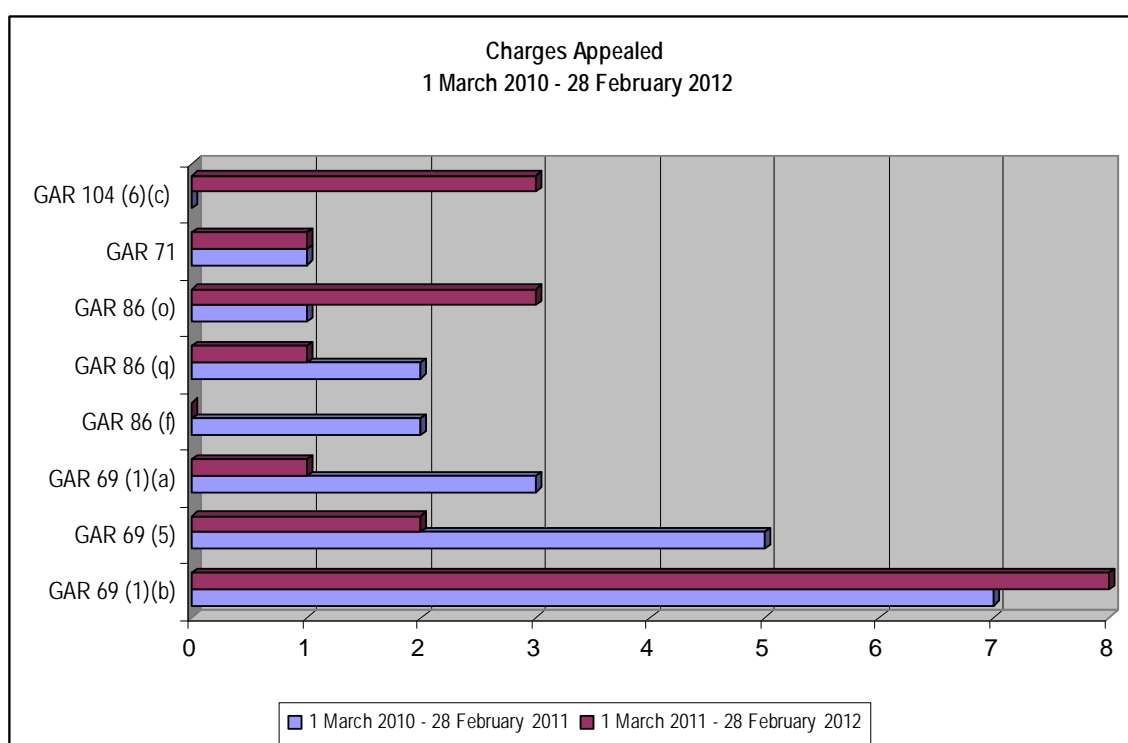
### ***Basis for the Appeal***

**Table 2: GRV Appeals**

	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
<b>Appeal Against</b>				
Decision and severity of penalty	20	95	13	72
Severity of penalty	1	5	5	28
	<b>21</b>	<b>100</b>	<b>18</b>	<b>100</b>

443. During 2010/11, 95 per cent of appellants appealed against both the decision and severity of penalty while only five per cent appealed against the severity of the penalty alone. In the following year, more people appealed against the severity of the penalty (28 per cent) and less against both the decision and severity of penalty (72 per cent) in comparison to the first year.

### **Charges Appealed**



444. In 2010/11, 33 per cent of appeals related to a charge under GAR 69(1)(b) (where a greyhound in the opinion of the Stewards fails to pursue the lure with due commitment during the event). Twenty four per cent of appeals lodged related to GAR 69(5) (Where the greyhound is found to be suffering from an injury upon an examination pursuant to sub-rule (4), a certificate shall be produced to the Stewards by the veterinary surgeon or authorised person detailing the injury. The Stewards shall endorse the greyhound's certificate of registration accordingly to show that the greyhound failed to pursue the lure, by reasons of injury) and a further 14 per cent of appeals related to charge GAR 69(1)(a) (where a greyhound in the opinion of the

*Stewards mars the running of any other greyhound during an event).*

445. In the following year, GAR 69(1)(b) represented 42 per cent of appeals, however GAR 69(5) only represented 11 per cent of appeals, a significant difference from the previous year.

446. In the 2011/12 period, 16 per cent of appeals relate to GAR 104(6)(c) (*An official officiating in a capacity that may have an effect on the result of an Event shall not - directly or indirectly engage in any betting transaction on that event*) and a further 16 per cent related to GAR 86(o) (*A person (including an official) shall be guilty of an offence if the person has in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct*). In the 2010/11 period, breaches of GAR 86(o) only represented 5 per cent of appeals and breaches of GAR 104(6)(c) did not result in any appeals.

### **Stay of Proceedings**

**Table 3: GRV Stays of proceedings**

<b>Stay of Proceedings</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Granted a stay of proceedings	10	48	10	55.5
Did not request a stay of proceedings	11	52	7	39
Stay of proceedings refused	0	0	1	5.5
	<b>21</b>	<b>100</b>	<b>18</b>	<b>100</b>

447. In the first year of reporting, 48 per cent of appellants requested and were granted a stay of proceedings.

448. In the second year of reporting, 55.5 per cent of appellants requested and were granted a stay of proceedings. One (5.5 per cent) appellant was refused a stay of proceedings.

## ***Representation***

**Table 4: GRV Representation**

	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
<b>Representation</b>				
Appeared on their own behalf	16	76	12	66.5
Representation	5	24	6	33.5
	<b>21</b>	<b>100</b>	<b>18</b>	<b>100</b>

449. During the 2010/11 period, 76 per cent of appellants appeared on their own behalf and 24 per cent attended with representation.

450. The second year of reporting saw a decrease in appellants appearing on their own behalf (66.5 per cent) in comparison to the first year, even though this group still outnumbers appellants appearing with representation.

## ***Decision***

**Table 5: GRV Appeals against decision**

	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
<b>Decision</b>				
Appeal against decision allowed	4	20	2	15.5
Appeal against decision dismissed	16	80	11	84.5
	<b>20</b>	<b>100</b>	<b>13</b>	<b>100</b>

451. The figures indicate that the GRV RAD Board is significantly more likely than not to refuse to overturn the original decision made by the Stewards. Less than a fifth of appeals on decision were allowed in the two-year period.

**Table 6: GRV Appeals against Severity of Penalty**

Decision	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Appeal against severity of penalty allowed	3	17.5	3	19
Appeal against severity of penalty dismissed	14	82.5	13	81
	<b>17</b>	<b>100</b>	<b>16</b>	<b>100</b>

These figures include matters where both the decision and the penalty were appealed and the appeal on decision was dismissed, as well as matters where only the penalty was appealed. Matters where the appeal on decision was allowed are not included.

452. Consistent with the figures on appeals regarding Stewards' decisions, the GRV RAD Board is unlikely to amend penalties in response to appeals regarding severity. Over the two-year reporting period, appeals on penalty were allowed in only 18 per cent of matters.

### ***Appeal Hearings by Month***

**Table 7: GRV RAD Board hearings by month**

Month	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
March	2	9.5	0	0
April	4	19	2	11
May	3	14	3	16.5
June	0	0	0	0
July	0	0	0	0
August	5	24	6	33.5
September	2	9.5	4	22.5
October	1	5	1	5.5
November	1	5	0	0
December	2	9	1	5.5

Month	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
January	1	5	1	5.5
February	0	0	0	0
	<b>21</b>	<b>100</b>	<b>18</b>	<b>100</b>

453. During the two-year period, no appeal hearings were held in the months of June, July and February. In the first year of operation, 19 per cent of hearings were held in April and in the second year of operation, 33.5 per cent of appeals were held in August.

#### ***Duration of Appeal Hearings***

454. In 2010/11, the period between lodgement date of the appeal and the date of the hearing averaged 19 business days. The length of an appeal hearing averaged one hour and 34 minutes.

455. In 2011/12, the period of time between the lodgement date of an appeal and the date of the hearing averaged 10 days and the length of an appeal hearing averaged one hour and 20 minutes.

#### ***RAD Board Panel Composition***

456. In 2010/11, the GRV RAD Board consisted of a Chair, Deputy Chair and nine members.

- (a) The Chairman sat on 16 of the 21 hearings
- (b) The Deputy Chairman sat on 20 hearings
- (c) All members sat on at least one hearing
- (d) One member sat on five hearings
- (e) Two members sat on four hearings each

457. In 2011/12, the GRV RAD Board consisted of a Chair, Deputy Chair and

nine members. During this time, seven members of the RAD Board sat on an appeal hearing.

458. The Chairman sat on 14 of the 18 appeal hearings

- (a) The Deputy Chairman sat on 16 appeal hearings during this period
- (b) On average, members sat on three appeals each

## Victorian Civil and Administrative Tribunal Statistical Analysis (1 March 2010 – 28 February 2012)

### General Overview

459. Between 1 March 2010 and 28 February 2012, VCAT received 32 applications (30 from racing industry participants and two from HRV) to review decisions made by the three Racing Appeals and Disciplinary Boards.

460. In 2010/11, eight appeals were lodged and two appeals were withdrawn. During this period, four appeals were finalised and two were carried over into the 2011/12 reporting period.

461. In 2011/12, 24 appeals were lodged, three were withdrawn by the applicants and the Principal Registrar rejected a further four applications. Of the matters that proceeded, eight were finalised within the reporting period and nine were completed outside the reporting period.<sup>138</sup>

### Respondents

**Table 1: VCAT Respondents**

	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Greyhound Racing Victoria	2	25	4	16.5
Harness Racing Victoria	2	25	13	54
Racing Victoria Limited	4	50	5	21
Racing Industry Participants	0	0	2	8.5
	<b>8</b>	<b>100</b>	<b>24</b>	<b>100</b>

462. In the first year of operation, 50 per cent of appeals lodged with VCAT

<sup>138</sup> Matters that were lodged in the 2010/11 and 2011/12 reporting periods and completed outside the reporting periods have been included in the statistical analysis for the year they were lodged.



involved RVL, followed by 25 per cent relating to GRV and 25 per cent to HRV.

463. The second year of operation saw a significant change in respondents, with 54 per cent of appeals made to VCAT involving HRV as respondent. HRV also appealed to VCAT on two occasions involving the decisions handed down by the HRV RAD Board in relation to two racing industry participants.

### ***Stay Hearings***

**Table 2: VCAT stay hearings**

	Mar 2010 – Feb 2011		Mar 2011 – Feb 2012	
	Total	Per cent	Total	Per cent
Yes	5	62.5	11	46
No	3	37.5	9	37.5
Not Recorded	0	0	4	16.5
	<b>8</b>	<b>100</b>	<b>24</b>	<b>100</b>

464. During the 2010/11 reporting period, 62.5 per cent of applicants were involved in a stay hearing. The recorded figure was 46 per cent in the 2011/12 period, although the actual figure could have been higher as there was no information recorded for 16.5 per cent of matters (four matters).

### ***Representation***

465. In the 2010/11 period, all applicants attended VCAT with representation. In the 2011/12 period, 33 per cent of applicants represented themselves, while the remainder attended with representation.

### ***Panel Members***

466. Four appeals lodged between 1 March 2010 and 28 February 2011 were presided over by a single member, while a further two were presided over by a panel of members. Two were withdrawn and are not included in the

data for this section.

467. Of the six panel members who presided over matters commenced during the 2010/11 period, two members, Senior Member Nixon and Senior Member Dyett, both previously sat on the RAT. Only one appeal was heard solely by a member who had not previously sat on the RAT.
468. Of the matters commenced during the 2010/11 period, Justice Ross (the VCAT President during the 2010/11 period) presided over two appeals with other panel members. On one occasion, Justice Ross sat with Judge Bowman and Senior Member Dyett, and on another occasion, he sat with Senior Members Reigler and Dyett. One appeal was heard and determined by Judge Lacava and Senior Member Nixon heard a further three appeals.
469. Of the 17 appeals commenced between 1 March 2011 and 28 February 2012 that proceeded, one appeal was presided over by a panel of members and 16 were presided over by a single member. One of these matters related to a jurisdictional issue. A further seven matters were withdrawn, rejected or refused and are not included in the data for this section.
470. Of the three panel members who presided over matters commenced during the 2011/12 period, Senior Member Nixon sat on 15 of the hearings, 14 as a single member and one with Judge O'Neill. Only on one occasion was an appeal heard and determined by a member who had not previously sat on the RAT.

### ***Length and Duration of Hearings***

471. For matters commenced between 1 March 2010 and 28 February 2011, appeal timeframes varied between one and 52 weeks from the date of commencement to the date of finalisation. The appeal that took 52 weeks was delayed as the tribunal did not deal with it until police charges were heard in the Magistrates' Court. The next longest matter was completed in

37 weeks. The average timeframe for the completion of matters was 23 weeks and the median timeframe for matters to be completed was 18 weeks.

472. The length of a VCAT hearing during the 2010/11 period averaged four hours. This average includes appeals with multiple hearings.

473. For matters commenced between 1 March 2011 and 28 February 2012, appeal timeframes ranged from three to 24 weeks from the date of commencement to the date of finalisation, with the exception of four matters that took 48 weeks each. The average timeframe was 22 weeks and the median timeframe was 16 weeks.

474. The length of a VCAT hearing for matters commenced during the 2011/12 period averaged 12.8 hours. This average includes appeals with multiple hearings.

### **Outcome**

**Table 3: VCAT Hearing outcomes**

<b>Outcome</b>	<b>Mar 2010 – Feb 2011</b>		<b>Mar 2011 – Feb 2012</b>	
	<b>Total</b>	<b>Per cent</b>	<b>Total</b>	<b>Per cent</b>
Appeal dismissed / Original decision and / or penalty affirmed	3	37.5	7	29
Appeal refused / rejected	0	0	4	16.5
Decision and / or penalty varied	1	12.5	7	29
Original decision set aside	2	25	2	8.5
Appeal withdrawn	2	25	3	12.5
Jurisdictional issue	0	0	1	4
	<b>8</b>	<b>100</b>	<b>24</b>	<b>100</b>

475. For matters commencing in the 2010/11 reporting period, two original decisions were set aside, original decisions and/or penalties were affirmed in three cases, and one penalty was varied.

476. In the following year (2011/12 period), in seven matters the original decision and/or penalty were affirmed on appeal and four appeal applications were rejected or refused by the Principal Registrar. In seven cases, an aspect of the decision and/or the penalty was varied on appeal. In two cases, the original decision was set aside and the appeal was withdrawn in a further three cases. In one case, a jurisdictional question was settled regarding whether VCAT may hear 'animal offences' and the applicant was given liberty to apply to have the matter heard in full.
477. Over the two-year period, 55 per cent of matters that were fully heard by VCAT resulted in the original decision being set aside or the decision or penalty being varied.

## **Appendix A - Lewis Report Recommendations - Area 4 - Appeals and Disciplinary Processes**

1. That all necessary organisational, legislative and regulatory amendments be made to achieve the following:
  - (a) A single appellate and disciplinary body for the three codes be constituted based on the RAD Board model.
  - (b) The disciplinary and appeal process across the three codes be the same.
  - (c) The RAD Board, HRV Domestic Appeal Panel and the Board member appeal panel for GRV cease to exist.
  - (d) The new appellate and disciplinary body consist of an independent Chairman and three Deputy Chairmen, one nominated by each of the codes. All should be experienced lawyers of not less than seven years standing in order to ensure procedural fairness.
  - (e) The independent Chairman be appointed by the Minister. The Chairman and Deputy Chairmen must not, while holding office, own or have an interest in any racehorse or greyhound, nor shall they hold office in RVL, HRV, GRV, any race club or any racing organisation.
  - (f) The Chairman, Deputy Chairmen and the representatives be appropriately remunerated.
  - (g) The Boards of RVL, HRV and GRV each nominate three representatives with experience in their codes, to sit with the Chairman or Deputy Chairman.
  - (h) For hearings, the new appellate and disciplinary body be constituted by the independent Chairman or a Deputy Chairman, plus two of the representatives from the relevant code.
  - (i) All hearings conducted by the new appellate and disciplinary body, be open to the public, except in exceptional circumstances, at the discretion of the Chairman.
  - (j) All appeals from a decision of the new appellate and disciplinary body be to VCAT, constituted by at least a Vice President, which will be the ultimate

appellate body, subject only to referrals to the Supreme Court, on questions of law.

- (k) The appellate jurisdiction of VCAT be common to all codes.
- (l) The Racing Appeals Tribunal be abolished.
- (m) The Board members of the new appellate and disciplinary body meet quarterly to discuss problems encountered and for the exchange of information.
- (n) The new appellate and disciplinary body use its quarterly meetings to discuss penalties imposed, with a view to achieving consistency across the codes.

## **Appendix B - Recommendations in the VRI Submission**

### **Recommendation 1**

That the three RAD Board model be maintained having regard to the inherent differences between the participant bases, nationally established rule books and largely unique characteristics of each racing code.

### **Recommendation 2**

That the position of the RAD Board Registrar be maintained given the advantages and efficiencies of a single administrative and reporting service.

### **Recommendation 3**

That the controlling bodies consider broadening the expertise and knowledge base of their RAD Board's to include persons with direct experience as former industry participants including trainers, jockeys and drivers as well as professional experts in the fields of veterinary science, drug detection and animal behaviour.

### **Recommendation 4**

That the periods of lodging appeals with RAD Boards be varied as follows -

- (a) Racing Victoria RAD Board period be reduced from three to two days
- (b) GRV RAD Board be varied from three days to three working days.

### **Recommendation 5**

That HRV and GRV be granted statutory power to impose an appeal deposit of \$400.00 (in the case of HRV) and \$200 (in the case of GRV) with a discretion for the respective RAD Board to refund all or part of the deposit if circumstances so warrant.

### **Recommendation 6**

That the minimum fine threshold for lodging an appeal to the GRV RAD Board be increased from \$250 to \$500.

### **Recommendation 7**

That the entitlement for an appellant to be represented at a HRV or GRV RAD Board hearing be subject to approval by the Chair of the hearing and that the Chair have a discretion to refuse or withdraw approval.

### **Recommendation 8**

That the Racing Act 1958 specify that the GRV RAD Board may hear appeals in respect to decisions imposed upon greyhounds.

### **Recommendation 9**

That appeals continue to be held in public unless otherwise directed by the Chair of the hearing.

### **Recommendation 10**

That the following new appeal model be adopted based on the Australian Football League model and replace the right to appeal to VCAT -

- (a) A Victorian Racing Appeals Board (VRAB) be established as a statutory body under the Racing Act 1958 to hear appeals against any decisions of a RAD Board on matters of law.
- (b) The Minister for Racing be responsible for the appointment of the VRAB after consultation with controlling bodies.
- (c) The VRAB comprise a Chair, three Deputy Chairs with a specialist understanding of the thoroughbred, harness and greyhound racing code respectively and a panel of members with relevant industry experience and / or professional expertise.
- (d) The Chair and Deputy Chairs be legally qualified persons of not less than seven years standing.
- (e) When hearing a matter, the VRAB be constituted by the Chair, the relevant code's Deputy Chair and a panel member selected by the Chair.



- (f) Procedural matters such as the requirement to seek leave to introduce new evidence and to have representation should be based on those applicable to the AFL Appeals Board.

**Recommendation 11**

That the Racing Integrity Commissioner convene a regular forum for RAD Board members to share information and discuss penalty consistency.

## Appendix C - List of Recommendations

1. That the *Racing Act 1958* be amended so that the requirements regarding the appointment and regulation of the Chairpersons, Deputy Chairpersons and ordinary members of the HRV and GRV RAD Boards are replicated for the RVL RAD Board. That is, the Minister should appoint an eligible person to be Chairperson of the RVL RAD Board and, on the recommendation of RVL, appoint two eligible persons to be the Deputy Chairpersons of the RVL RAD Board. The restrictions on the interests and activities of the members of the HRV and GRV RAD Boards, as contained in sections 50D, 50E and 50F and sections 83D, 83E and 83F of the Racing Act respectively, should also apply to RVL RAD Board members.
2. That the diversity of RAD Board panels and the experience of individual members in hearing matters be increased by:
  - (c) Encouraging more frequent use of Deputy Chairpersons to preside over (or sit on) RAD Board matters; and
  - (d) Establishing a minimum quorum under the Act that requires three RAD Board members to sit on all substantive hearings (one of whom must be either the Chair or Deputy Chair). Such requirement to be waived by the presiding member for hearings of urgent matters where a third RAD Board member is not available.
3. That the procedural document (referred to in Recommendation 5 for introduction) include a prohibition on a RAD Board member taking part in any hearings where he or she has a conflict of interest and the further requirement that such an interest to be declared and recorded.
4. That the three controlling bodies meet together with the Registrar to identify opportunities to improve and standardise procedures relating to RAD Board hearings, particularly as they relate to the involvement of third parties such as Racing Analytical Services Limited. Further, that such meetings should occur as required and at least every two years.
5. That the controlling bodies and the Registrar develop a document setting

out procedures governing RAD Board matters, which is endorsed by the RAD Board Chairs and published by the Registrar and Deputy Registrars on each controlling body's website.

6. That the Office of the Racing Integrity Commissioner undertake research to support and assist the codes to develop sanction guidelines for both stewards and RAD Boards.
7. That RAD Boards record their reasons for decisions and the Registrar or Deputy Registrars publish the reasons on the relevant code's website.
8. That the Registrar convenes meetings of the three Chairs and/or Deputy Chairs of the RAD Boards as required and at least annually. Such meetings should be used to discuss problems encountered, exchange information, review trends, discuss issues and review penalties imposed. The Racing Integrity Commissioner should contribute to the meetings by making available statistical data and analysis regarding the activities of the RAD Boards and VCAT.
9. That the usefulness of the Register be improved by:
  - (a) the Registrar consulting with the Chairs of the three RAD Boards to determine if and how the Register can be enhanced to increase its accessibility for RAD Board members during hearings and improve its searchability for specific types of information; and
  - (b) the controlling bodies support the Registrar and Deputy Registrars by ensuring the RAD Boards have live access to the Register during hearings.
10. That the procedural document referred to in Recommendation 5 stipulates that the period for lodging appeals from stewards' decisions relates to calendar days, not business days. This information should be contained in the prescribed forms issued by the stewards when sanctions are imposed and in a conspicuous place on each code's website. It should be made clear to HRV and GRV participants that if an appeal period expires on a Saturday, Sunday or public holiday, the appeal time is extended to expire

on the next business day.

11. That a specific VCAT Registrar be assigned to manage all racing matters.
12. That VCAT develop a pool of at least two VCAT members (with non-RAT backgrounds) available to hear racing matters, in addition to the former RAT members who are currently available.
13. That VCAT ratifies a Practice Note to introduce policies/practices to address existing concerns regarding racing appeal matters, particularly in respect of timeframes.
14. That the *Racing Act 1958* be amended so that VCAT's jurisdiction to review decisions of RAD Boards is limited to decisions made by RAD Boards in their original jurisdiction. For matters that RAD Boards hear in their appellate jurisdiction, any further appeals should be to the Supreme Court on errors of law only.

End of Report.