



Office of the
Racing Integrity
Commissioner

Public Summary Report

Own Motion Inquiry under s 37B(1)(g) of the *Racing Act 1958*
into the Conduct of Stewards and Withdrawal of Charges Against
Richard Laming, Marnu Potgieter, and MD Zeyaur Rahman by
Racing Victoria Limited on 25 February 2021

Sean Carroll
Racing Integrity Commissioner

10 June 2021



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1. Introduction

1. The role of the steward in ‘policing’ the Rules of Racing is fundamental to upholding both society and industry expectations that the highest integrity standards exist within the Victorian Racing Industry (VRI). The future success and sustainability of the industry is underpinned by the confidence of participants and public that the conduct of those who enforce integrity standards is beyond reproach. This was recognised by Racing Victoria Limited (RV) in its *Fair Racing for All* report (2019) which stated:

“Society’s expectations have changed. The power has shifted to the customers, who are demanding the highest standards of ethical behaviour and transparency across all industry and community sectors.”¹

2. This report is issued to the public by the Racing Integrity Commissioner (RIC) to provide information about the own motion inquiry under s 37B(1)(g) of the *Racing Act 1958* (Vic) (*the Act*) into the Conduct of Stewards and Withdrawal of Charges Against Richard Laming, Marnu Potgieter, and MD Zeyaur Rahman by RV on 25 February 2021. It is a report of the proceedings of that inquiry, and it summarises the report and recommendations made by the Commissioner to RV and the Minister for Racing under ss 37B(1)(h) and 37C of *the Act*.

¹ <https://cdn.racing.com/-/media/rv/2019-rv/integrity/files/fair-racing-for-all-report-october-2019>. Page 8

2. Functions and Powers

3. The *RIC* is established under s 37A of *the Act*. The Rules of Racing of Racing Victoria are constituted by the Australian Rules of Racing (*AR*) made by the Australian Racing Board and the *Local Rules (LRs)*, made by *RV*. Together these comprise the Rules of Racing (*the Rules*), which are applicable and enforceable as law to the extent provided for by s 5F of *the Act*.
4. The role of the *RIC* was established under *the Act* to protect the integrity of the *VRI* as a whole, by providing independent oversight of integrity matters across the three codes and the distinct controlling bodies that regulate each, and assurance to industry participants and the public that Victorian racing maintains the highest possible standards of integrity.² *RV* is the controlling body for the thoroughbred racing industry in Victoria.³
5. As the *RIC*, my functions under *the Act* include, to:
 - investigate complaints made about the integrity processes and systems of a controlling body – s 37B(1)(c);
 - conduct own motion inquiries that do not relate to any specific complaint and may include an investigation into systemic issues in racing – s 37B(1)(g); and
 - make recommendations to the Minister, the Victorian Racing Integrity Board (*VRIB*) or relevant controlling body, as appropriate – s 37B(1)(h).
6. In conducting an investigation or inquiry, I may exercise powers under *the Act*, including compelling the production of documents and other things or attendance of witnesses, and taking evidence on oath.⁴ These powers extend to licensed participants and the employees of controlling bodies.⁵
7. The nature of the *RIC*'s functions and powers means that the conduct of any inquiry is necessarily inquisitorial. My role is to establish facts, so that I can identify any shortcomings and systemic issues in racing integrity and make recommendations about how they may be overcome.
8. Inquiry findings are made based on proof of relevant facts to the civil standard, on the balance of probabilities, and applying the principles set out in *Briginshaw*.⁶ Adverse findings or comments against organisations or individuals in their professional capacity can only be made on the basis of what was known or should reasonably have been known or done at the time, and only where the evidence supports a finding that there has been a material departure from the requisite standards.

² Second Reading Speech, Racing Legislation Amendment Act (Racing Integrity Assurance) Bill, 29 July 2009

³ *Racing Act (1958)* s 3

⁴ *Ibid* ss 37BB – 37BD

⁵ *Ibid* s 37BA

⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336

3. Background

9. On Melbourne Cup Day, Tuesday 5 November 2019, RV Compliance Assurance Team (CAT) Stewards Dion Villella and Mark Stevens (*the Stewards*) attended the stables of licensed trainer Richard Laming. Whilst there, *the Stewards* conducted a stable inspection and pre-race examination of a thoroughbred mare named “*Jamaican Rain*” (*the mare*), that was engaged to race at Flemington later that day. Following the inspection, *the Stewards* commenced covert surveillance of the stables.
10. As a result of surveillance, *the Stewards* re-attended the stables, spoke to the participants present, collected evidence, and inspected *the mare* again. *The mare* was subsequently scratched from the race due to a swelling identified in a forelimb.
11. *The Stewards* conducted an investigation into the alleged race day treatment of *the mare*. At the conclusion of the investigation, in February 2020, Richard Laming (*Trainer*), Marnu Potgieter (Assistant Trainer), and MD Zeyaur Rahman (Stablehand) (*the Participants*) were charged with breaches of *the Rules* relating to the race day stomach-tubing of *the mare* and their subsequent dealings with *the Stewards*.
12. An allegation of race day stomach-tubing, AR 255(1) *Stomach-tubing prohibited at certain times*, is a serious offence under *the Rules* and must be heard and determined by the VRT. *The Participants* indicated they would contest the charges, and the matter was listed for hearing before the VRT in February 2021.
13. The proceeding commenced on 22 February 2021 and was scheduled to run for five days. Mid-way through the hearing, on 24 February 2021, RV applied to the VRT to adjourn the case until the following day. Although the VRT was not told of the reason, the barrister representing RV informed the VRT that:

*“It would be very dangerous to ignore the circumstances and it would put the Tribunal, ultimately ... in a difficult position.”*⁷
14. On 25 February 2021, RV made application to withdraw the charges against *the Participants* and did not provide any explanation for this. *The Participants* subsequently made application to the VRT to have the charges dismissed. *The Participants*, application was granted.

⁷ p-83, Transcript of hearing, Laming 25/2/21

15. The dismissal of the charges subsequently received significant media attention questioning the conduct of *the Stewards* and the integrity of the evidence before *the VRT*. The Office of the Racing Integrity Commissioner (*ORIC*) was contacted by members of the public, the media and racing participants about the matter.
16. The ensuing uncertainty and speculation served to undermine the racing industry and public confidence about whether *the Stewards*, whose role is to 'police' *the Rules*, had fallen short of maintaining the high standards of integrity expected of them.
17. On 15 March 2021, I requested *RV* provide information relating to the circumstances of the withdrawal of the charges against *the Participants*. *RV* produced documents and other information, including details of its own internal investigation into the matter.
18. Following an assessment of all of the information provided by *RV*, I determined to conduct an own motion inquiry (*the Inquiry*) under s 37B(1)(g) of *the Act* into the conduct of *the Stewards* that led to the application to withdraw the charges against *the Participants*.
19. *The Inquiry* commenced on 21 April 2021, and was conducted over 10 days, concluding on 4 May 2021. During this period, 13 witnesses were called and gave sworn evidence with *RV* producing more than 1000 documents, emails, and recordings to *the Inquiry*.
20. My findings and recommendations are set as follows.

4. Findings

21. These findings do not purport to identify all aspects of the evidence obtained in the course of *the Inquiry* which include the materials voluntarily disclosed by *RV*, as well as the sworn evidence given by witnesses at the hearing and the documents and reports produced. The absence of reference to any particular aspect of the evidence does not infer that it was not considered.

Conduct of the Stewards which resulted in withdrawal of charges

22. On 23 February 2021, day two of the hearing into the allegations against *the Participants*, Steward Villella was called to give evidence at the *VRT* about the inspection undertaken at the *Trainer's* stables at Cranbourne on 5 November 2019, including his observations of the alleged stomach-tubing and subsequent investigation. Prior to Steward Villella giving evidence there was direction given by the *VRT* that all witnesses leave the hearing room.

23. At the end of day two of the hearing, Steward Villella's evidence was part heard and he was still under cross-examination by *the Participants'* barrister. At *the Inquiry*, Steward Villella said that during a previous adjournment he was told by *RV's* barrister not to contact or speak to any other witnesses involved in the case. Whilst it is unclear if Steward Villella was present at the time of the tribunal direction ordering witnesses from the hearing room, Steward Villella provided evidence to *the Inquiry* that he had attended tribunal hearings previously and that he was aware that he was unable to contact any witnesses whilst giving evidence during the *VRT* hearing, although he was unaware of the reason for this. I am satisfied that Steward Villella was aware that he should not contact Steward Stevens or any other witness whilst he was still giving evidence at the *VRT*.

24. From the evidence before *the Inquiry*, I am satisfied that on three separate occasions over three consecutive days, Steward Villella deliberately communicated with Steward Stevens (twice by mobile phone and once in person). I consider that Steward Villella did not have a reasonable excuse to contact any witness in the case.

25. Whilst Steward Stevens had declared the initial phone contact to *RV* on 24 February 2021, neither Steward Stevens nor Villella declared the further two contacts to *RV* until 23 March 2021.

26. I consider that Steward Villella's conduct was aggravated by his overt acts to hide the behaviour, through his:

- use of a mobile phone that was not his own on two occasions;
- request that the log of the call be deleted from Steward Steven's phone; and
- incomplete and delayed candour with *RV* about what had occurred.

27. During *the Inquiry* Steward Villella admitted these acts and acknowledged that he had made an error in judgement.

28. I find no indication that Steward Villella sought to influence the evidence of Steward Stevens. Rather, the evidence before me indicates that Steward Villella's actions were motivated by misplaced self-doubt as he second-guessed himself in the face of robust cross-examination from defence counsel.

29. From the evidence presented to *the Inquiry*, Steward Villella's conduct was *RV*'s major consideration in the decision to make the application to withdraw the charges against *the Participants*.
30. Steward Villella's conduct also fell well short of the high standards expected of racing stewards in discharging their professional duties to enforce *the Rules*. This conduct may be considered a breach of *the Rules* in that it was detrimental to the interests of racing.
31. Other allegations were made about the conduct of *the Stewards* and their evidence at the *VRT* hearing. I have reviewed all evidence available to me gathered throughout *the Inquiry* and have been unable to identify any evidence to support any other allegations of wrongdoing by *the Stewards*.

Conduct of *RV* in not disclosing the reason for the application to withdraw charges

32. Criticism has been levelled against *RV* for not declaring its reasons for its application to withdraw the charges against *the Participants* on 25 February 2021.
33. *The LRs* require that written reasons must be given if charges are withdrawn in proceedings before the former Racing Appeals and Disciplinary Board (*RAD Board*).⁸ Under changes to *the Act* introduced in 2019, the *VRT* replaced the *RAD Board*, although the latter still has some legacy cases on foot. For unknown reasons, when the *VRT* was established, *the LRs* were not amended to adopt a similar process for the withdrawal of charges as existed under the *RAD Board provisions*.
34. I consider such a rule to be fundamental to ensuring appropriate transparency and accountability about how stewards exercise their discretion to prosecute and enforce *the Rules* and maintain industry and public confidence.
35. Whilst *RV* was under no obligation according to the *LRs* to disclose to the *VRT* the reason for the application to withdraw the charges, the lack of information created a public void that was filled with rumour and speculation. In the absence of any explanation being offered, the outcome sparked considerable industry, public and media attention, which served to undermine confidence in the integrity standards of the *VRI*.

⁸ LR 8C(5) Withdrawal of Charge

4. Findings (cont).

36. The VRT plays a central role in upholding VRI integrity and compliance with *the Rules* by hearing and determining serious offence charges and appeals from decisions of the three controlling bodies. To discharge its functions effectively and maintain industry and public confidence, the VRT must be able to rely on the truthfulness and integrity of the evidence presented. I therefore consider it paramount that any concerns about the reliability or veracity of the evidence of witnesses or materials placed, or intended to be put, before the tribunal be raised immediately with the VRT.

RV inspection and investigation capability and capacity

37. The CAT plays a vital role in maintaining the integrity of the thoroughbred racing industry. It holds primary responsibility for RV's conduct of 'non-race' investigations and conducts over 1500 stable inspections every year. Additionally, it manages and oversees the security program for all horses in Group One and nominated major races. The CAT operates as a separate team from RV's race day stewards, although it currently reports to the Chief Steward.

38. I have formed a view, based on my observations throughout this *Inquiry* and during numerous race and non-race day interactions with RV stewards over the last two months, that RV has significant competence, expertise and capability in the performance of equine and race day integrity functions. However, I also consider that the role of Chief Steward, by its nature and breadth, may inhibit the effective oversight and management of the CAT.

39. *The Inquiry* revealed that CAT stewards before *the Inquiry* had limited knowledge of investigation principles. I consider that the 'standard investigation practices' adopted by *the Stewards* at Cranbourne on 5 November 2019 provided the opportunity for the investigation to be compromised from the outset which, in my view, ultimately contributed to the application to withdraw the charges.

40. Additionally, these CAT members had limited investigation qualifications, and historically, RV stewards have received minimal formal specialist investigation education or training. *The Inquiry* recognises there are current and former CAT members who have extensive investigations experience and qualifications.

41. *The Inquiry* identified issues with staffing capacity within the *CAT* during major carnivals. I am concerned that, if not managed adequately through effective rostering and the availability of a surge workforce during peak periods, these issues have the potential to impact the wellbeing of stewards.
42. I also formed a view that, on 5 November 2019, Steward Vilella, the *CAT* Manager, was focused on participating in the investigation as opposed to managing the team and investigation process. This greatly reduced his ability to have oversight and manage other *CAT* activities and investigations that were occurring at the same time.

RV investigation and prosecution policies, systems and processes

43. *RV* investigations are conducted according to the *RV* Investigation Management Procedure (*IMP*). The *IMP* provides a process to follow for the conduct of routine investigations. However, this is limited for stewards commencing or managing complex or protracted investigations.
44. Section 5F of *the Act* provides guidance as to persons who “*the Rules of Racing apply to and may be enforced against*”. There was a level of confusion from those witnesses that appeared before *the Inquiry* as to the application of *the Rules* towards stewards.

45. *RV* investigations are conducted according to the *IMP*. The *IMP* references “Complaints against Integrity Services Department Staff”. However, this guidance is not prescriptive and fails to cross-reference the *RV Employee Conduct Management Policy (ECMP)*. The *ECMP* has insufficient detail about the circumstances in which any internal investigation process should be undertaken and how that should occur, employees’ obligations, and whether *the Rules* apply to all or any *RV* staff. In contrast, the *RV* staff Code of Conduct specifically mentions compliance with *the Rules*.
46. Following the disclosure of Steward Vilella’s initial conversation with Steward Stevens on 23 February 2021, *RV* determined to conduct an internal investigation. Whilst this investigation was conducted in a manner consistent with *RV*’s current protocols and undertaken by senior management who acted professionally, the senior management had an existing working relationship with *the Stewards*. I consider that this alone had the potential to create a perception of unconscious bias in favour of *the Stewards*.

5. Recommendations

47. I make the following recommendations pursuant to s 37B(1)(h) of *the Act*, and request that *RV* report to me on the implementation of each by 31 December 2021.

Recommendation 1

RV to immediately (no later than seven days) inform the *VRT* and *the Participants*' barrister of Steward Vilella's conduct in contacting a witness during the course of the *VRT* hearing.

Recommendation 2

RV to investigate whether the conduct of Stewards Vilella and Stevens was in breach of *the Rules*, particularly:

- *AR 228 Conduct detrimental to the interests of racing.*

RV to inform me in writing of the outcome of this investigation.

Recommendation 3

RV to address the issue of a lack of transparency and accountability about how stewards exercise their discretion to prosecute and enforce *the Rules* by amending the *LRs* to ensure the requirements of LR 8C(5) apply to charges that are withdrawn before the *VRT*.

Recommendation 4

RV to ensure that it has appropriate capability and adequate capacity to concurrently conduct both targeted or complex investigations, routine stable inspections and sampling, particularly during peak periods, by:

- reviewing the different and specialist skills, expertise and experience required by stewards employed in inspection and investigation roles and their managers, including the desirability of managers having minimal active roles so that their time can be directed to the oversight and supervision of day-to-day operations, providing accurate advice and timely guidance in the conduct of all investigations and brief preparation; and
- reviewing staffing levels and rostering arrangements within the inspection and investigation functions, including the use of contracted investigators during peak periods, to ensure adequate capacity and capability and mitigate against the risk of compromise to staff wellbeing and performance.

Recommendation 5

RV to review its investigations and prosecution policies, systems, and processes on a bi-annual basis to specifically address:

- all targeted inspections, investigations (including internal investigations), surveillance operations and brief management; and
- all investigation policies and procedures are documented, dated, and regularly reviewed, aligned with industry best practice, and reflect current subject matter expertise and knowledge.

Recommendation 6

RV to review its employment and internal investigations policies to specifically address:

- that all relevant policies and procedures clearly identify the obligations of employees, management and directors under *the Rules*, the process that will be undertaken if a breach is detected and the consequences of non-compliance, and ensure this is widely communicated and understood, with ongoing education provided; and
- ensuring that Racing Integrity & Equine Welfare Sub-Committee, VRIB and ORIC are advised of complaints or allegations of serious misconduct, or suspicion of integrity or criminal-related matters against any steward or integrity official, including prior notice of any pending investigation to be conducted. This would include consideration given to the investigation being conducted by an independent and external investigator or body. At the conclusion of such an investigation a copy of the investigation outcome report be provided to the Racing Integrity & Equine Welfare Sub-Committee, VRIB and ORIC.

Recommendation 7

RV to review and strengthen the minimum standards of education for key integrity staff by:

- ensuring stewards who conduct non-race integrity investigations hold, or are provided with the necessary support to attain, the minimum qualification as determined by the VRIB Integrity Training Steering Committee within the next two years. By way of example, this may include:
 - Certificate IV in Racing Integrity;
 - Certificate IV in Government Investigations; or
 - appropriate experience in law enforcement or other investigation background in a government agency or similar.
- ensuring all investigation managers and/or persons required to check or authorise a brief of evidence, in addition to the above qualifications and experience, hold, or are provided with the necessary support to attain, the following minimum qualification within the next two years:
 - Diploma of Government Investigations;
 - a relevant accredited criminal law and procedure qualification; or
 - appropriate experience in the management of investigations in a law enforcement or other investigation background in a government agency or similar.

Recommendation 8

Having regard to Recommendation 7, the *VRIB* Integrity Training Steering Committee shall provide clear direction on integrity education, training, and qualifications across all Racing Codes with a view to developing training modules that require mandatory successful completion on a regular basis. This includes the appointment of a qualified education specialist whose sole responsibility is to project manage and deliver this process.

6. Conclusion

48. The success of the *VRI* is built on the excellent reputation the sport enjoys. The faith that participants and public have in the integrity of the sport is integral to that reputation. *The Inquiry* has been conducted to ensure that faith is maintained through the continuous improvement that will be obtained through the above recommendations.
49. Whilst this report has been completed to finalise urgent matters arising out of *the Inquiry* that are addressed in the above recommendations, *the Inquiry* has also identified a number procedural and legislative concerns within *the Act* and *the Rules*, and how each can be administered or applied at the *VRT*.
50. Before recommending any potential changes to the *Act* or *the Rules*, I will consider how they might be administered and the likely impact on the *VRI* and *VRT*, including Harness Racing Victoria and Greyhound Racing Victoria, and racing nationally within the applicable Rules. These matters will be the subject of a separate report outside the scope of this *Inquiry*.

Sean Carroll
Racing Integrity Commissioner

10 June 2021

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