



2012 Own Motion Inquiry into Race Fixing

23 January 2013

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GLOSSARY OF ACRONYMS

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| ACC | Australian Crime Commission |
| ARB | Australian Racing Board |
| ARHR | Australian Rules of Harness Racing |
| COMPPS | Coalition of Major Professional and Participation Sports |
| GA | Greyhounds Australasia |
| GRV | Greyhound Racing Victoria |
| HRA | Harness Racing Australia |
| HRV | Harness Racing Victoria |
| IRs | Information Reports |
| ISC | Integrity Sub Committee |
| NRIAG | National Racing Integrity Advisory Group |
| RIC | Racing Integrity Commissioner |
| RVL | Racing Victoria Limited |
| VBA | Victorian Bookmakers Association |
| VCAT | Victorian Civil and Administrative Tribunal |
| VRI | Victorian Racing Industry |

EXECUTIVE SUMMARY

Background

My role as the Racing Integrity Commissioner (RIC) is to provide independent oversight of integrity matters across the three codes which comprise the Victorian Racing Industry. The powers of the RIC include the conduct of Own Motion Inquiries that relate to general and specific matters and include investigations into systemic issues in racing.

Since taking up this office as the inaugural RIC on 1 March 2010, to 6th August 2012, I had received 12 'Information Reports' (IRs) or complaints which raised allegations regarding race fixing. None of these were substantiated.

On Monday 6 August 2012, The Age newspaper reported on allegations of race fixing under investigation by Victoria Police. The article reported that, during the police investigation into the homicide of former racehorse trainer, Les Samba (killed in Middle Park, Melbourne on 27 February 2011), detectives had uncovered evidence of suspected race fixing. As a consequence, a separate police investigation had commenced regarding a race at Cranbourne on 27 April 2011 which is referred to as the 'Smoking Aces Inquiry' and remains under investigation by Victoria Police.

On the same day as the newspaper article, Victoria Police announced a reward of \$1 million for information leading to the arrest of Samba's killer(s).

That evening, the ABC's 'Four Corners' program expanded on The Age story addressing issues of crime and corruption in racing.

Following the initial media reports of 6 August 2012, public and media interest grew exponentially. In the following ten days, this office recorded 153 mentions of race fixing in media reports reaching a recorded audience or circulation of almost 14 million people.

In view of the public interest and further allegations regarding other races, I made the public announcement on 16 August 2012 to conduct an Own Motion

Inquiry (the Inquiry) into Race Fixing across the three codes and invited members of the general public and the racing industry to provide information.

A four week period was specified for the public to submit any information relevant to race fixing in racing. Over that period a further 110 media mentions regarding race fixing were recorded, reaching an audience or circulation of over 13 million.

Inquiry Overview

The Inquiry into Race Fixing in Victoria (the Inquiry) was conducted pursuant to my powers under Section 37B (1)(g) of the *Racing Act 1958* (the Racing Act). Apart from the invitation for persons to come forward, I also invited the three racing controlling bodies, Racing Victoria Limited (RVL), Harness Racing Victoria (HRV) and Greyhound Racing Victoria (GRV) to make submissions to the Inquiry.

In addition, I met with a number of persons who were prepared to meet with me personally, formally or informally, overtly or in confidence. These included wagering providers, trainers, owners, representatives of racing affiliation bodies, media reporters and journalists, former and current law enforcement officers, former and current racing integrity officials and representatives from various government agencies.

My aim during this Inquiry was specifically to identify whether race fixing was systemic in this state and generally to consider the broader issues which had been raised during the period of media attention for example stewards' powers over unlicensed persons.

Inquiry Statistics

Not including the 12 IRs my office had received prior to this Inquiry (March 2010 – August 2012), the Inquiry received a total of 61 IRs. (This was almost the same number received for the entire previous year on all integrity matters.)

Almost a third were received through our independently managed 'Integrity Hotline' (1300 227 225).

86 per cent of IRs related to thoroughbred racing, 10 per cent to harness and 2 per cent to greyhounds.

41 per cent of persons providing information contacted me personally, requesting that their identity be protected.

A total of 211 themes were identified across the 61 IRs. The three central themes were race fixing (22 per cent), jockey betting (19 per cent) and jockeys 'pulling up' horses and/or suspicious riding (10.5 per cent).

Other themes related to exchange of 'inside information', relationships with known or reputed criminals, relationships with 'commission agents', conspiracies between jockeys and corruption of jockeys to win or lose.

Inquiry Methodology

In accordance with my powers and functions, I reviewed each IR and decided an appropriate course of action regarding investigation. All IRs with any relevance to criminal matters were disclosed to Victoria Police. All IRs with relevance to the rules of racing were disclosed to the relevant controlling body. In many instances IRs were disclosed or referred to more than one body.

A total of 97 IRs were prepared by my office for disclosure or referral. 49 of these were forwarded to Victoria Police, 39 to RVL, six to HRV, one to GRV and two were referred to the Victorian Commission for Gaming and Liquor Regulation.

12 per cent of the 49 IRs to Victoria Police were assessed by police as being relevant to investigations being conducted by the Purana Taskforce. A number of these are still under investigation. Almost a third were found to be unsubstantiated while another third were recorded for intelligence purposes. To date, none of the IRs forwarded to Victoria Police have resulted in the laying of charges.

All races nominated in IRs were reviewed and assessed by the relevant code's stewards/integrity personnel. 44 per cent of IRs to RVL were found to be unsubstantiated, 28 per cent were recorded for intelligence purposes and 28 per cent are pending final outcome at the time of writing.

One IR referred to RVL alleged that a bet had been placed by jockey Damien Oliver on a race in which he was riding at Moonee Valley on 1 October 2010. This IR subsequently resulted in RVL stewards laying charges against Oliver for breaches of rules of racing in respect to betting by a jockey and use of a mobile phone in the jockeys' room.

Findings and Recommendations

My findings were drawn from the results of this Inquiry and the detailed analysis and subsequent investigations conducted in regard to each piece of information received, by my office, Victoria Police or the three racing controlling bodies. The findings also reflect the knowledge and information my office has gained during an extensive familiarisation and engagement program undertaken since the creation of the RIC position.

From 1 March 2010 to 31 December 2012, my office has met with over 2300 people representing over 800 organisations, agencies and departments. In addition, my office has undertaken over 100 operational visits to race meetings and other racing related sites for example; laboratories, quarantine centres and wagering providers and conducted 48 presentations to over 1400 attendees.

The result of being in this role for almost three years is that I have formed the view that we are at a 'watershed moment' in racing in this state.

While I have seen a great deal of excellent work undertaken by the controlling bodies and other key stakeholders, much has been reactive and now requires major reform to address new and emerging needs.

The public confidence in integrity in racing has been damaged and the time is right for cultural, organisational and legislative change to restore that

confidence and ensure that Victoria can rightly be proud to claim the mantle as the leading racing state and sporting capital of the country.

Each of my findings and recommendations is explained in detail within this report. For ease of reference, they can be summarised as follows:-

1. Race Fixing

- No criminal charges have been laid
- The Damien Oliver matter alleged matters relating to betting by jockeys, not race fixing
- There were 4,355 races with 42,919 starters in 2011-12
- Based on current evidence, race fixing is NOT a systemic issue in Victoria

2. Racing Integrity Commissioner – Legislated Powers

- The current powers of the RIC have proved to be inadequate to address current and emerging needs
- The RIC is unable to provide protection to persons who offer racing integrity related information, similar to the protection afforded by the Whistleblower Act
- The RIC is unable to undertake investigations which compel the production of information or documents; require the appearance of persons; administer a sworn oath; or compel the answering of questions.

Recommendation 1: Amend the *Racing Act 1958* to confer on RIC the powers and privileges of a Board of Inquiry.

Recommendation 2: Amend the *Racing Act 1958* to confer power on RIC to provide protection to informants.

3. Law Enforcement/Victoria Police

- Nationally, law enforcement has taken steps to address the issue of the inability to share information (for example the *Australian Crime Commission Act 2002 (Cth)* was amended to permit the Australian Crime Commission to disclose information to racing bodies).
- Since Victoria Police disbanded the racing squad in the 1990's, there has been no dedicated specialist investigative unit for racing related crime and corruption.
- The Victoria Police Gaming and Racing Intelligence Unit should have the capability to a) undertake a detailed collection of all racing related information held by Victoria Police and b) refer all racing investigations to dedicated and specialist racing investigators.
- The 2008 Lewis Report recommendation that a police racing squad be re-formed has not been implemented. The alternative, a Victoria Police chaired Racing Industry Committee, proved ineffective and was later discontinued.
- Commonwealth telephone interception legislation limits the ability of law enforcement agencies to disclose information to other agencies and leaves major gaps in racing integrity.

Recommendation 3: That the Minister approach the Commonwealth Attorney General to seek amendment to the *Telecommunications (Interception and Access) Act 1979 (Cth)* to include provision for law enforcement bodies to provide telecommunication interception information to authorised bodies performing enforcement duties.

Recommendation 4: That the Minister take all necessary steps to urge the Chief Commissioner of Police to establish a dedicated, specialist investigative unit comprising

qualified detectives responsible for racing related crime and corruption.

Recommendation 5: That the Minister take all necessary steps to urge the Chief Commissioner of Police to sufficiently resource the Victoria Police Racing and Gaming Intelligence Unit to enable firstly, the discovery, and secondly, the collection, collation and analysis, of all racing related information held by Victoria Police with a view to disseminating such information to the appropriate bodies, where legally permitted.

Recommendation 6: That the Minister take all necessary steps to invite the Chief Commissioner of Police to conduct a review with the aim of identifying any barrier(s) to the lawful and effective sharing of information between the police, the RIC and the racing controlling bodies.

4. Crime Legislation

Sports Ministers and Racing Ministers nationally have agreed to a coordinated and concerted approach to integrity in sport for example the 'National Policy on Match-Fixing In Sport', the creation of a national sports integrity unit and the creation of a National Racing Advisory Integrity Group (NRAIG).

State Attorneys General have been asked to develop specific offence legislation for match fixing and cheating at gambling.

To date, only one state has introduced the legislation (NSW; 13 September 2012), which provides for a maximum of 10 years imprisonment for those involved in the corrupt conduct and a maximum of two years imprisonment for those using the inside information.

Victoria is considered the lead racing and sporting state; introduction of this legislation must be prioritised.

Recommendation 7: That the government expedite the introduction of 'cheating at gambling' legislation as a major priority.

5. Racing Industry Issues

(a) Unlicensed Persons.

Currently, there is a perceived regulatory gap that exists regarding powers of stewards over persons that are not licensed, for example, commission agents and form analysts, as the rules of racing do not apply to unlicensed persons.

There is a view that RVL could test the finding expressed in the Victorian Civil and Administrative Tribunal (VCAT) decision of *Clements v RVL* [2010] VCAT 1144, which created the gap, and argue that the rules of racing do apply. My view is that this approach has potential for a negative outcome to racing's public image.

Recommendation 8: Amend the *Racing Act 1958* to provide that the rules of racing (all codes) apply to, and are binding on, both persons who hold licences, registration, permits etc issued by the controlling bodies, and also those who attend race meetings or participate in activities connected with racing or wagering on racing (unlicensed persons). Such amendment to also introduce the proviso that the rules of racing are to apply to and be binding on unlicensed persons only if a stewards' inquiry is or has been initiated in connection to a race or associated betting activity; and stewards believe on reasonable grounds that the subject of the inquiry may involve a breach of the rules; and the unlicensed person is in possession of information that will assist the inquiry.

(Note: my recommendation for this change in legislation is only required if my recommendation (See Recommendation 11) regarding the appointment of stewards and integrity staff to statutory positions is not implemented.)

(b) Jockey Betting.

Has been identified as a major issue from this Inquiry and RVL's inquiry into allegations regarding Damien Oliver.

Is a cultural issue, that is, there is an acceptance that most, if not all, jockeys bet and such behaviour is condoned.

Is conduct that undermines public confidence.

The ability to place 'lay' bets has compounded the perception.

The rules of racing regarding jockeys and harness drivers betting is currently classed as a 'non-serious' offence in both codes' rules of racing.

Recommendation 9: That RVL expedite its intention to alter the offence of a jockey placing a bet from a 'non-serious' offence to a 'serious' offence under the rules of racing. (That is, cannot be heard and determined by stewards but must be heard and determined by the Racing Appeals and Disciplinary Board).

Recommendation 10: That HRV do likewise in regards to the Australian Rules of Harness Racing (ARHR) regarding the offence for a driver to bet on any race in which they participate.

(c) Integrity Structures

There is a vast disparity in approach to integrity by the three codes which remains despite the recommendations of the 2008 Lewis Report.

The reporting lines, structure, recruitment, induction, training and development of stewards and integrity officers vary substantially.

There is minimal cross-code communication or cooperation.

The major issue is that of stewards/integrity officers' independence from management, including their decision making ability, their reliance on management for funding, and management's 'hands on' involvement in integrity matters (up to and including Board Members).

Recommendation 11: The *Racing Act 1958* be amended to establish an independent body with responsibility for the integrity processes and systems across the three codes and remove such responsibility from the controlling bodies. Such statutory body to be conferred all powers and authorities of stewards and integrity staff, including powers to obtain information from non-licensed persons, and to include the transfer of current integrity services staff and stewards and existing integrity budgets to the newly formed body.

(d) Bookmakers

There is an apparent reluctance of bookmakers to recognise they have a role (proactive and reactive) in assisting the racing industry to maintain integrity.

A number of bookmakers have refused to sign Memoranda Of Understanding with RIC to so acknowledge.

This is outside the scope of my power and authority but I will bring it to notice of the Victorian Bookmakers Association (VBA) for purpose of education and awareness.

I also request the government to consider the option of introducing an offence under the *Gambling Regulation Act 2003* for wagering service providers to accept a bet from a licensed jockey or harness driver.

6. National Issues

There is a lack of representation of racing at the national level i.e. the Coalition of Major Professional and Participation Sports (COMPPS), a national organisation which consists of sports governing bodies.

COMPPS has a major concern regarding integrity related aspects of sports betting but has no representation from racing which is a sport built on betting.

Again, this is outside the scope of my function and powers but I will request the Minister to approach COMPPS to accept a racing representative (from Australian Racing Board (ARB), Harness Racing Australia (HRA) or Greyhounds Australasia (GA)) to be invited to COMPPS meetings at which integrity related matters are discussed.

7. Ancillary Matters

There are a number of other matters which have arisen during this Inquiry which are also relevant. For example, the stewards power to 'stand down'; the current appeals and disciplinary process; drug control in racing; and the issue of granting stays of proceedings. These are being addressed in other reports being prepared by my office during 2013.

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PART A – INTRODUCTION, BACKGROUND AND OVERVIEW

Introduction

The Racing Integrity Commissioner (RIC) position was established under the *Racing Act 1958* to provide independent oversight of integrity matters across the three racing codes – Thoroughbred, Harness and Greyhounds – which constitute the Victorian Racing Industry (VRI).

In March 2008, the Victorian Government appointed Judge Gordon Lewis AM, to review integrity assurance in the Victorian Racing Industry. The terms of reference required Judge Lewis to identify options “.....to ensure that integrity assurance within the industry is of the highest standard.”¹

The catalyst for the review was the betting activities of Stephen Allanson, the former Chief Executive Officer (CEO) of Racing Victoria Ltd. (RVL), the controlling body for thoroughbred racing in this state.

Judge Lewis’ report (the ‘Lewis Report’)² identified a number of integrity related services and systems that required improvement and to this end he made 63 individual recommendations to enhance integrity assurance practices and processes across the industry, including the establishment of the position of RIC. These recommendations were accepted for implementation by both government and industry, and led to my appointment and commencement as the inaugural RIC on 1 March 2010.

My role was designed to provide independent oversight of integrity matters across the Victorian Racing Industry including the power to conduct Own Motion Inquiries that did not necessarily relate to any specific complaint and could include investigations into systemic issues in racing.

¹ “A Report on Integrity Assurance in the Victorian Racing Industry”. Judge G.D. Lewis AM. 1 August 2008. pg. 5

² Ibid

The Lewis Report contained numerous references to a variety of issues pertaining to elements of criminality in the industry. As well as identifying the need for my role to conduct Own Motion Inquiries into systemic issues affecting racing, specific recommendations were made by Judge Lewis to address various issues he had identified. Particularly relevant to this inquiry was his view that, *“It must be recognised by Victoria Police Command that the racing industry is a fertile ground for dishonesty and illegal manipulation”*³. Judge Lewis noted that part of the proper control required for the racing industry was the involvement by Victoria Police at a senior level and by officers who possess a knowledge of the industry. Judge Lewis stressed that, in order for his review and the recommendations which flow from it, to be effective, operational matters at Victoria Police must be addressed.

Judge Lewis also noted that the disbanding of the Victoria Police Racing Squad left racing *“.....without the benefit of a working relationship with experienced detectives with specialist knowledge of the racing industry.....”*⁴

Equally as critical was Judge Lewis’ view regarding the lack of oversight powers concerning commission agents, pointing out that *“This situation should be remedied without delay.”*⁵

The Lewis Report draws reference to a variety of aspects identified during this Inquiry, which almost five years later are still relevant.

It was with the context of the Lewis Report findings in mind that this race fixing inquiry was conducted.

Background to this Inquiry

Since the creation of this office on 1 March 2010, a number of IRs or complaints had been received regarding allegations of race fixing.

From 1 March 2010 to 5 August 2012, these numbered 12. Each was examined, in the majority of cases, with the assistance of the appropriate

³ Ibid pg 25

⁴ Ibid pg 18

⁵ Ibid pg 23

controlling body (Racing Victoria Limited (RVL); Harness Racing Victoria (HRV); Greyhound Racing Victoria (GRV); and/or Victoria Police. None of the investigations resulted in the identification of a breach of a rule of racing or a criminal offence. It was evident that, where there was no supporting evidence such as betting activity and witnesses, the key to identifying whether a result had been pre-determined relied totally on the analysis and examination of the race. Also evident was that ‘experts’ analysing such races would have conflicting opinions and suspicions.

The number of IRs and complaints (12 over a two and a half year period) is worth noting. Over this same period, a variety of contact methods for this office had been established. These included a dedicated integrity hotline, managed independently by a third party and providing total anonymity. In addition, an extensive stakeholder familiarisation and engagement program had been in place which resulted in meetings with an extensive number of people from all facets of the racing industry and key stakeholder organisations.

In spite of the extensive contact with the general public, law enforcement, government agencies, wagering providers and the racing industry across the three codes, 12 reports reflected a sense that race fixing was not of major concern in this state.

On Monday 6 August 2012, The Age newspaper in Melbourne reported on allegations of race fixing under investigation by Victoria Police.⁶

The article reported that, during the police investigation into the homicide of former racehorse trainer, Les Samba (killed in Middle Park, Melbourne on 27 February 2011), Victoria Police organised crime detectives had uncovered evidence of suspected race fixing. The story reported that as a consequence, police were investigating horse racing figures, for allegedly conspiring to fix the outcome of a race involving a horse called ‘Smoking Aces’. This race was later identified as Race 6 at Cranbourne on 27 April 2011.

⁶ The Age, Melbourne. 6 August 2012. “*Police probe racing corruption. Top jockeys investigated. The Smoking Aces Scandal*”. Exclusive by Nick McKenzie, Clay Hitchens and Richard Baker. Page 1.

On the same day, 6 August 2012, Victoria Police announced a reward of \$1 million for information leading to the arrest of Samba's killer(s).

That evening, ABC's Four Corner's program expanded on The Age story of that morning addressing the issue of corruption and crime in horse racing.⁷

At that time, the race fixing allegations centred on the one race at Cranbourne, which was under investigation by Victoria Police.

In the Victorian thoroughbred racing industry, there were 42,919 total starters and 4,355 total races in the 2011-12 year.⁸ Whilst I was concerned with the information reported by the media on that date, I took the view that there were no allegations regarding other races or of systemic issues and it was appropriate to await the results of the police investigation.

Following The Age and Four Corners reports on 6 August 2012, public and media interest grew exponentially. Between 6 August and the launch of my Inquiry on 16 August, my office recorded 153 media mentions of race-fixing allegations over radio, television, press and internet with a reported audience or circulation of almost 14 million.⁹

Included in the quickly increasing and widespread attention was speculation that more than one race was under suspicion and allegations spread to other persons in the racing industry.

Simultaneous with the increased public and media interest was an increase of information coming to this office. Between the 6 and 16 of August 2012, a total of 8 IRs were received by my office providing information and allegations regarding crime and corruption in racing .

On Thursday 16 August 2012, I publicly announced my intention to conduct the Inquiry into race fixing allegations. As an independent officer representing

⁷ ABC Four Corners. 6 August 2012. "*Inside Mail*" reported by Nick McKenzie and presented by Kerry O'Brien. ABC1. 8.30pm

⁸ 2011/12 Australian Racing Fact Book. '*A Guide to the Racing Industry in Australia*'. Printed by Racing Information Services Australia for the Australian Racing Board. January 2012.

⁹ Data collected and collated by Office of the Racing Integrity Commissioner (ORIC) via recorded excerpts from Media Monitors. August/September 2012.

the general public, I felt obliged to examine whether there were any systemic integrity issues in relation to race-fixing, not only in thoroughbred racing, but across all three racing codes.

From the date of this announcement to 14 September 2012 when the formal period for public contact closed, a further 110 media mentions regarding race fixing were recorded, reaching a known audience or circulation of over 13 million.¹⁰

Of further note is that the media and public interest did not wane. Another 58 mentions were recorded in the 3 weeks following the conclusion of the designated period for receiving information, reaching a known audience or circulation of over 10 million.¹¹

Inquiry Overview

The inquiry was conducted pursuant to my powers under section 37B(1)(g) of the Racing Act. Public submissions were called for from the commencement of the Inquiry, Monday 20 August 2012, for a four week period ending Friday 14 September 2012. During this period, I invited any person, whether connected with the racing industry or not, to come forward with any information relevant to race-fixing. I also invited the three controlling bodies to make submissions to the Inquiry.

Further, I met with a number of persons who were prepared to meet personally with me, formally or informally, overtly or without disclosing their identity.

Whilst I was not empowered to compel any person to meet or speak with me, numerous persons chose to do so. These included:-

- wagering service providers
- licensed trainers
- racing industry affiliations

¹⁰ ORIC Media Monitoring Data 2012. op. cit.

¹¹ ORIC Media Monitoring Data 2012. op.cit.

- media
- law enforcement officers (current and former)
- racing integrity staff (current and former)
- government agencies

I also made both an indirect and direct approach to Tony Mokbel, who is currently serving a sentence of imprisonment, in regards to his alleged knowledge and familiarity with the racing industry. This was refused.

My approach in meeting with these people, examining the information provided and analysing submissions had a dual purpose. Firstly, to consider whether race fixing was systemic or isolated; and secondly, to consider the broader associated issues, including the industry oversight of unlicensed persons, the provision and exchange of information with law enforcement and my own legislated powers under the Racing Act to conduct an inquiry such as this.

PART B – METHODOLOGY AND RESULTS

As previously referred to, the public announcement of the Inquiry brought unexpected levels of both media and public interest. Explanation of the huge public interest is best left to others, however it would be reasonable to infer that associated media reports regarding the Les Samba homicide investigation, controversial incidents involving jockeys and the (then) upcoming Spring Carnival were all contributing factors.

This level of interest was welcomed by my office. An inquiry of this nature requires heightened public awareness.

Each contact in relation to race fixing made to my office was recorded as an IR. An IR is simply a term applied to a document or computer entry recording information received. All IRs were entered into the office Case Management System which provides both management and tracking tools to enable analysis and an audit trail.

Each contact was assessed personally by me for classification and determination as to appropriate action.

Race Fixing Statistical Analysis

Between the 1 March 2010 (commencement date of my office) and the 6 August 2012, (The Age article and Four Corners story) my office had already received 12 IRs which, in part or whole, referred to race fixing.

Many also referred to betting by jockeys and the exchange of 'inside information' between jockeys, punters, form analysts, commission agents and known or reputed criminals.

Between 7 August 2012 and 16 August 2012, (announcement of the Inquiry) the office received a further eight IRs. The information during this time also consisted of allegations of jockeys betting and race fixing.

Another 4 IRs were received from the Inquiry announcement day and the commencement of the designated Inquiry period for public submissions i.e.

between the 17 August 2012 and the 19 August 2012. These also consisted of betting and race fixing allegations.

During the designated dates of the Inquiry for public submissions (20 August 2012 to 14 September 2012) the office received a further 43 IRs. Assessment of those IRs identified that 10 were not related to race fixing, but sources had indicated that due to the media coverage (of the Inquiry) they felt it appropriate and timely to offer other information in relation to the racing industry.

Since the completion of the collection period for the Inquiry (14 September 2012), the office has continued to receive a further 6 IRs.

A decision was taken for reporting purposes to analyse all IRs up to 10 October 2012, a total of 73, including the 12 which had been received prior to this Inquiry.

As 10 of the IRs were not related to race fixing, the Inquiry analysis was undertaken on 63 IRs regarding race fixing, 51 of which were received from the day following The Age/Four Corners media reports over the following nine week period. In itself, this was a significant result as 63 IRs were received for the entire previous year (2011-12 financial year).

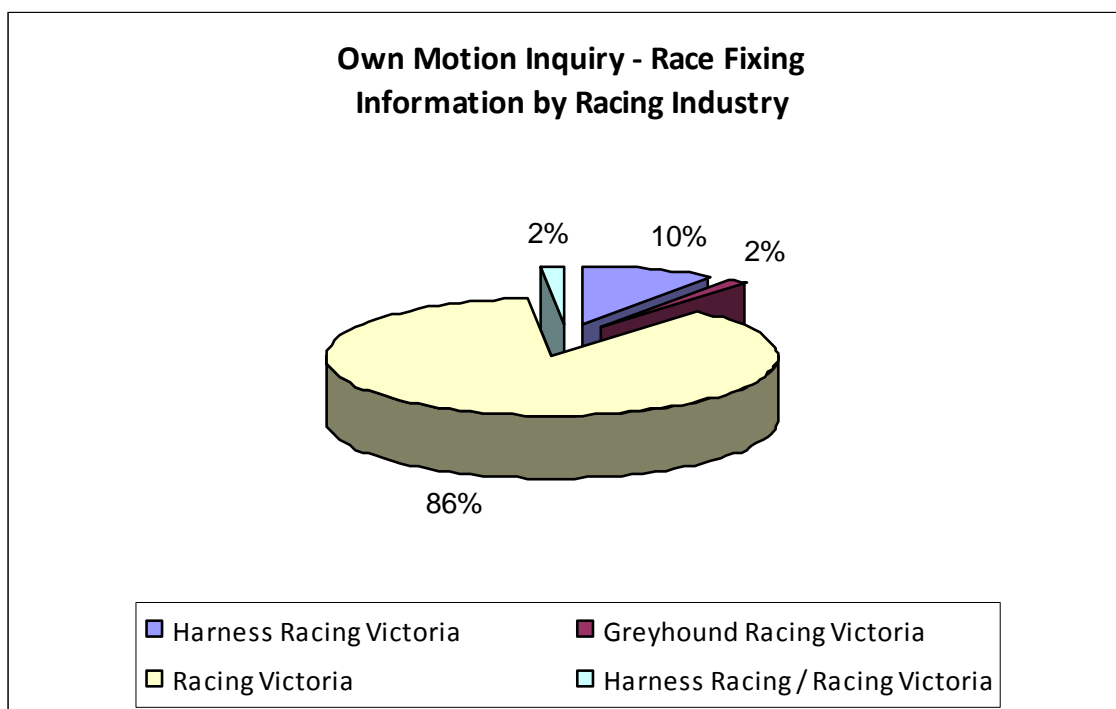
Method of Receipt

The information provided to my office was received through a variety of methods including; mail, facsimile, personal delivery of documents and face-to-face meetings.

A large amount of the information was received directly by my office over the telephone (40 per cent) while a further 29 per cent utilised our independently managed Integrity Hotline (1300 227 225).

Racing Codes Nominated

Most of the information received related to thoroughbred racing (86 per cent). 10 per cent of the information related to harness racing and two per cent related to greyhound racing. The remaining two per cent related to both thoroughbred and harness racing.

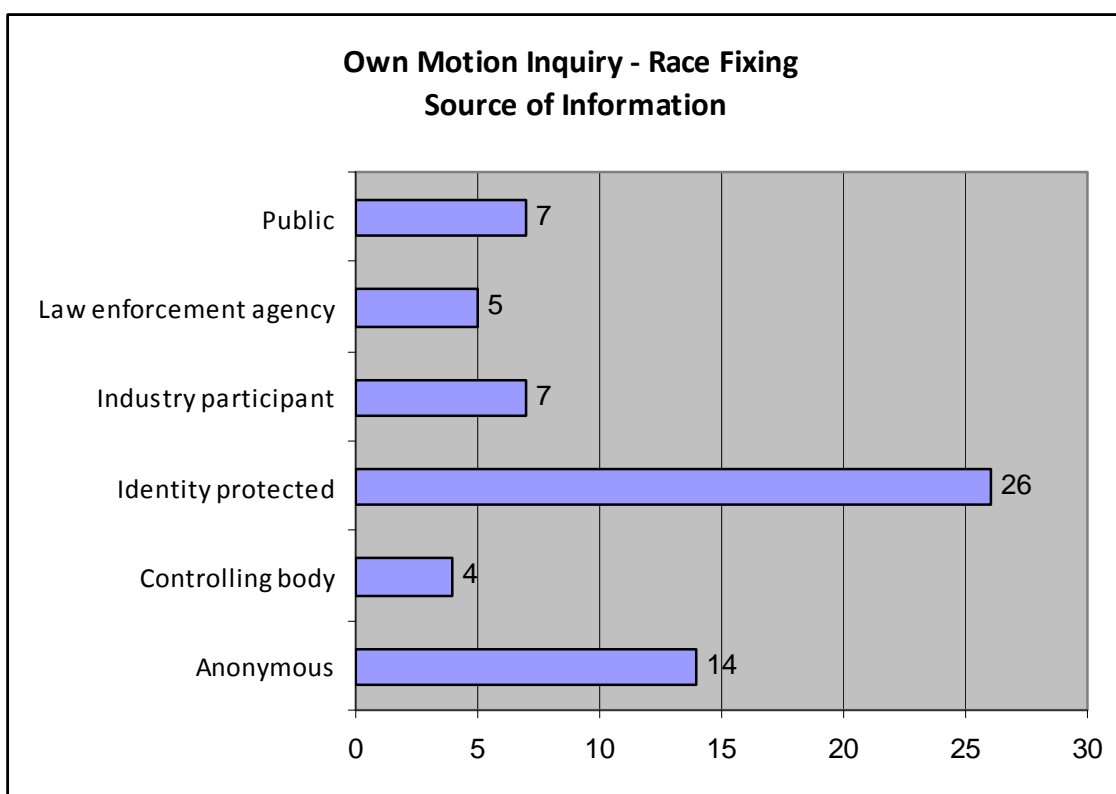


Sources of Information

Information was received from a variety of sources during the Inquiry, including the three racing controlling bodies in this state, RVL, HRV and GRV (7 per cent), and law enforcement agencies (8 per cent).

A considerable number of people (41 per cent) contacted me personally requesting to have their identity protected, while another 22 per cent provided information to the office anonymously.

22 per cent of the information was received overtly, with 11 per cent coming from industry participants and another 11 per cent received from the public.



Identified Themes

The information received by the office was collected, collated and analysed. A total of 211 'themes' were identified in the 63 IRs.

Analysis indicated three central themes, with race fixing nominated in 22 per cent; jockeys betting in 19 per cent of themes; and jockeys 'pulling up' horses or suspicious rides in 10.5 per cent of themes.

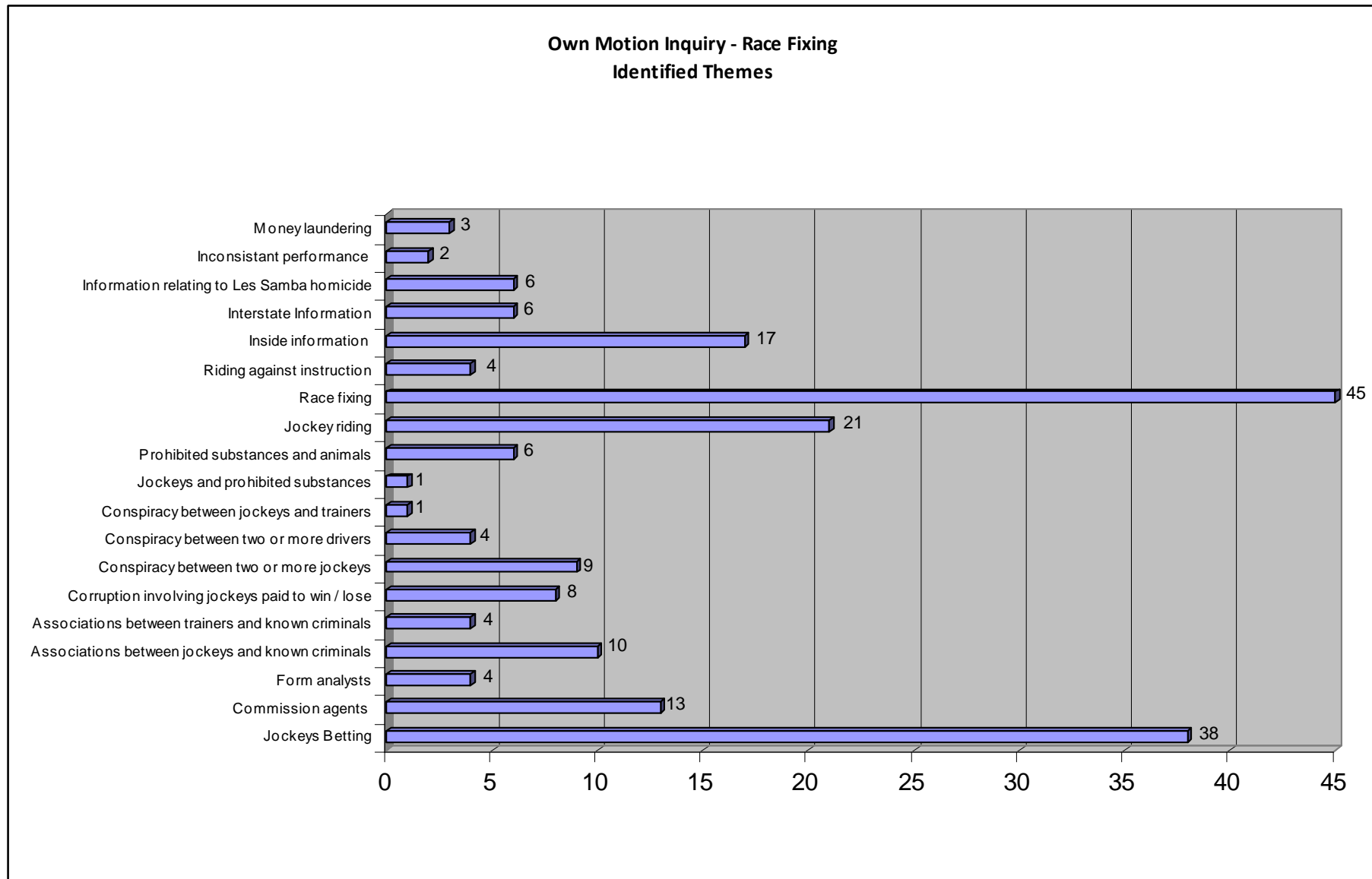
Other themes included the exchange of inside information between jockeys, punters, form analysts, owners and known/reputed criminals (8.5 per cent) and with commission agents (6.5 per cent).

Other information provided included; associations between jockeys and known or reputed criminals (5 per cent); 4.5 per cent identified alleged conspiracies between two or more jockeys to fix a race; and 4.2 per cent were allegations of corruption involving jockeys being paid to win / lose.

Other themes identified in the IRs included the involvement of form analysts, jockeys riding against instruction, conspiracies between two or more harness drivers, and associations between trainers and known criminals.

Six IRs were received in relation to the use of prohibited substances in racing animals and five regarding issues in interstate racing.

Allegations of money laundering were identified in three IRs, while two IRs mentioned inconsistent performance results by trainers. Information was also received in relation to alleged conspiracies between jockeys and trainers and one IR regarding jockeys involved in using prohibited substances.



Six IRs related to the Les Samba homicide investigation.

22 per cent of IRs (received by my office) related to one theme, whereas the remaining 78 per cent of submissions contained more than one theme. Four contained as many as 11 themes and 18 contained three themes.

39.3 per cent of the 211 themes were regarding either race fixing or jockey betting.

Of the 211 themes contained within the 63 IRs, 55.4 per cent were classified as being crime/corruption related. This does not include another 21.4 per cent regarding betting or drugs.

Actions Arising from Information Reports

In accordance with my functions and powers under S.37B and S.37E of the Racing Act, each of the IRs received by my office were actioned on their own merits, that is, a judgement made as to the best method of dealing with that particular body of information. When the information related to police investigations, that IR would be disclosed or referred to Victoria Police. When the information related to licensed persons or races coming under the jurisdiction of a particular controlling body, that IR would be disclosed or referred to the relevant controlling body that is RVL, HRV or GRV. In many cases, the IR would be disseminated to more than one relevant body.

Over the course of the Inquiry, the office prepared and disseminated a total of 97 IRs. These consisted of IRs from information received by this office, or IRs prepared by this office as a result of meetings, interviews or information received in submissions.

Of the 97 IRs disseminated, 49 were disseminated to Victoria Police; 39 to RVL; six to HRV; one to GRV; and two were referred to the Victorian Commission for Gaming and Liquor Regulation (VCGLR).

A total of 30 (of the 97) IRs were disseminated to both Victoria Police and Racing Victoria. Two were disseminated to Victoria Police, RVL and HRV and another IR was disseminated to all three racing codes and Victoria Police.

Of the 49 IRs disseminated direct to Victoria Police, 12 per cent were identified by police as relevant to their ongoing race fixing investigations by the Purana Taskforce and one corroborated intelligence currently held.

Almost a third of the IRs forwarded to Victoria Police were found to be unsubstantiated while another third were recorded for intelligence purposes. At the time of writing, 35 per cent of the IRs forwarded to Victoria Police are still pending advice of outcome.

None of the IRs forwarded to Victoria Police have to date resulted in criminal charges.

Overall, police deemed the majority of IRs disseminated to them of minimal value for criminal investigation purposes.

Of the 39 IRs disseminated to Racing Victoria, all nominated races were reviewed by RVL with the result that 44 per cent of the allegations were found to be unsubstantiated; 28 per cent were recorded for intelligence purposes; and the remaining 28 per cent are pending final outcome at the time of writing.

One IR referred to RVL alleged that a bet had been placed by jockey Damien Oliver on a race in which he was riding at Moonee Valley on 1 October 2010. This IR subsequently resulted in RVL stewards issuing two charges against Oliver for breaches of the rules of racing with the following results:-

1. Australian Rule of Racing AR 83 (c) – prohibition of betting by a jockey – eight months disqualification to be followed by two months suspension of licence to ride in races.
2. Australian Rule of Racing AR 160B (3) – possession of a mobile phone in the jockeys' room – one month suspension of licence to ride; to be served concurrently with the penalty in charge 1.¹²

¹² Racing Victoria Limited, *Damien Oliver stewards inquiry result*, 20 November 2012, available at http://www.racingvictoria.net.au/news/rvl/n_Damien_Oliver_stewards_inquiry_result.aspx, accessed on 22 January 2013.

(Note: I am currently reviewing aspects related to this RVL inquiry and will report my findings in due course.)

Race Fixing – Media Analysis

The considerable and consistent media attention to the recent racing integrity issues has been of great advantage to this inquiry.

At the outset of my inquiry, I was conscious of the limit of my powers to require persons to produce information or be interviewed. In many respects, I was reliant on the increased public awareness to stimulate their interest in coming forward.

Without the continual, high levels of exposure of the recent racing issues, I doubt that my office would have received the number of IRs received and contacts made with my office.

Apart from the extraordinary media attention during the designated inquiry period (20 August to 14 September 2012) as referred to previously, our own website recorded 395 visits which is double the average number of visits for the same period.

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PART C – RACE FIXING ANALYSIS

During this Inquiry, 63 IRs were received relating to various aspects of race fixing.

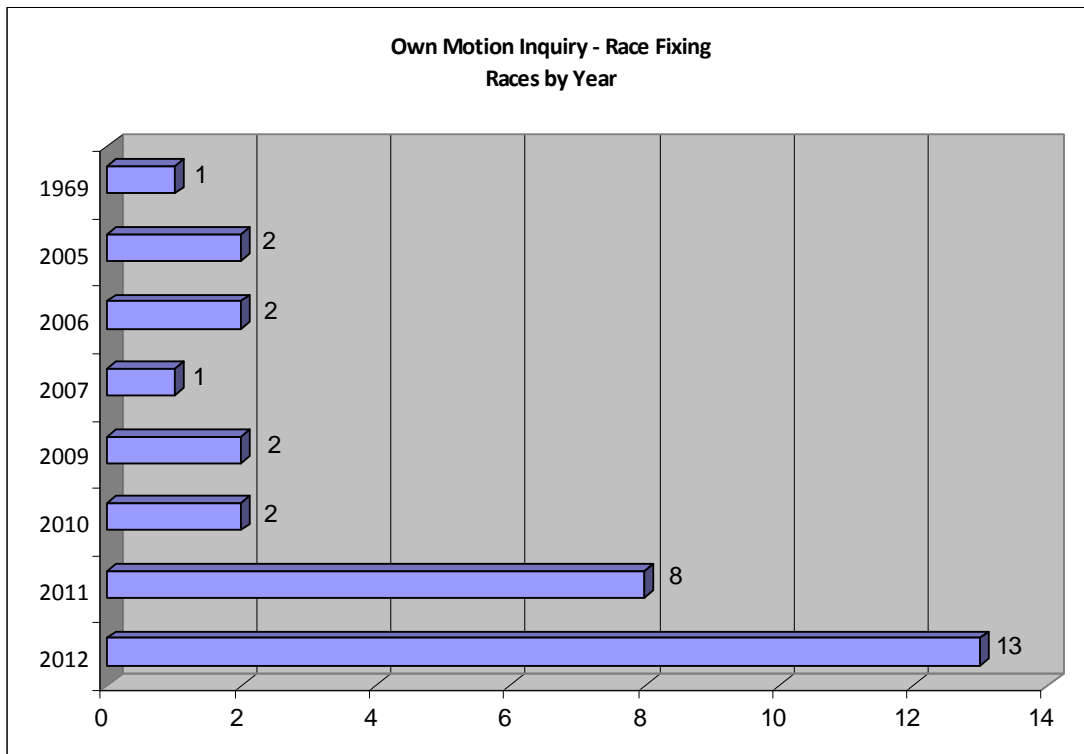
The information nominated a total of 92 horses and three greyhounds. Of the 92 horses, 81 thoroughbreds and 11 standardbreds were nominated; eight thoroughbreds were mentioned on two or more occasions.

Five stables were nominated, two nominated on two occasions each, while prohibited substances, Propantheline, Morphine Pates, Endogenous Erythropoietin Protein (EPO) and Inositol Trispyrophosphate (ITPP) were mentioned in a total of five IRs.

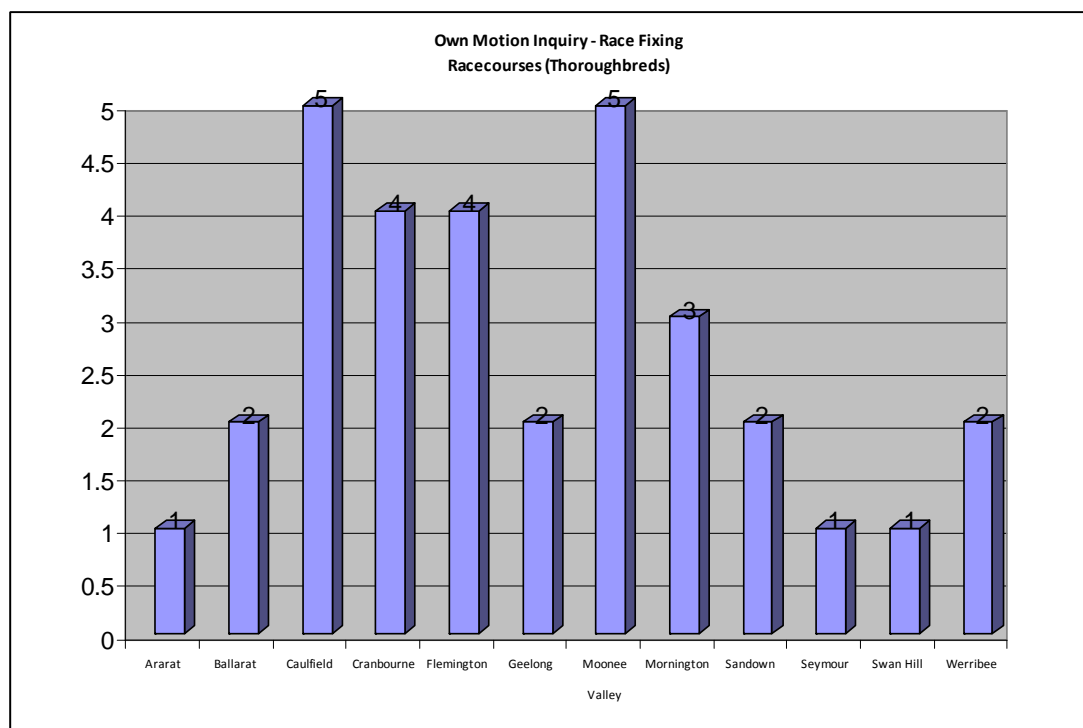
30 races between 2005 and 2012 were nominated for various reasons in the 63 IRs. One IR related to the use of inside information for betting on the 1969 Melbourne Cup.

42 per cent of races nominated referred to races during the 2012 calendar year.

A further 26 per cent related to races held in 2011 and two races held in 2005, 2006, 2009 and 2010 were also nominated. One race in 2007 was nominated.



The race meetings relating to harness racing involved races at regional racecourses such as Kilmore, Shepparton and Mildura. Race meetings nominated in thoroughbred racing were those in both metropolitan and regional Victoria, and involved 12 racecourses. Of these 12, allegations concerned five races at Moonee Valley, five at Caulfield, four at Flemington and four at Cranbourne.



The IRs nominated a total of 31 jockeys and 13 harness drivers.

Of the 31 jockeys, one jockey was mentioned in 21 (68 per cent) of the IRs, while two other jockeys were each nominated in eight IRs (26 per cent).

Another jockey was mentioned in seven IRs and another jockey in six. Eleven jockeys were nominated in two or more IRs.

Of the 13 harness drivers nominated, five were mentioned in two IRs, while the remaining drivers were mentioned in only one each.

32 trainers (25 thoroughbred trainers and seven harness trainers) were nominated. The harness trainers were nominated once each, while one thoroughbred trainer was nominated on four occasions and two other thoroughbred trainers were nominated on three occasions.

11 IRs nominated commission agents, professional punters, bookmakers or form analysts. Of the 11, one person was nominated on four occasions and another on three occasions.

Known or reputed criminals were nominated in 26 IRs.

Whilst the aim of this inquiry was clearly on the issue of race fixing, a number of persons chose to identify a variety of other integrity related aspects including the use of prohibited substances, jockeys providing tips, suspicious jockey riding, use of inside information and money laundering. Each of these were also reviewed, analysed and referred or disclosed to the relevant bodies as appropriate.

PART D – FINDINGS AND RECOMMENDATIONS

My Inquiry was conducted to specifically address the growing speculation that race fixing was an issue in Victoria. It goes without saying that the confidence of the public is critical to the success and viability of an industry that provides economic benefit of between \$2 billion and \$3 billion annually to this state. A public inquiry of this nature was initiated to address doubts in the minds of both the racing industry and the general public.

In addition to the statistical analysis of information submitted to my office through a variety of methods both covertly and anonymously, my views are also supported by the knowledge I have gained through interaction with a myriad of people I have been in contact with, both during and prior to this inquiry.

A key objective in my annual business plans is stakeholder engagement and industry familiarisation. Since commencing office on 1 March 2010, and as at 31 December 2012, my office has met with over 2300 people, representing over 800 organisations, agencies and departments. In addition, my office has undertaken over 100 operational visits to race meetings, racing and other industry facilities (such as the racing laboratory, quarantine centre, wagering providers, appeal and disciplinary hearings) and conducted 48 presentations to over 1400 attendees.

Many of these interactions were of a formal nature such as meetings to discuss a variety of issues, but a substantial number were informal and casual. Irrespective of whether I met in an office environment or a trainer's stables or an owner's kennels, each of those discussions assisted me to form my views.

Equally important to note is that the inquiry was focussed on race fixing, but quickly expanded into a far broader examination of integrity related matters. It was apparent that I needed to consider a range of issues that were of concern to the general public, the controlling bodies and/or other major stakeholders in the Victorian Racing Industry (VRI).

Prior to addressing each of these issues, it is once again important to note that my findings and recommendations are based on the information that has come into my possession. As I have previously stated, I have not received some information held by law enforcement. Access to this information could substantially affect some of my views.

One view I firmly hold is that we are at a watershed in regards to integrity in racing in this state. Whilst I have seen a great deal of excellent work undertaken by the controlling bodies and key other stakeholders, much has been reactive to identified shortcomings and has only 'scratched the surface'.

Integrity is a core responsibility and accountability and yet there has been minimal change in the resourcing, enforcement, cooperation and governance aspects of racing's integrity systems and processes.

Stewards and integrity staff in the controlling bodies continue to compete for budget allocations against the commercial needs of other business units; have restricted ability to direct drug testing; limited access to law enforcement resources or information; and work with numerous complex rules that are continually changing and do not always address emerging issues. Persons, such as form analysts and commission agents, who are not required to be licensed by controlling bodies (unlicensed persons) continue to cause issues as to whether they fall outside the rules of racing. Law enforcement still has no dedicated specialist racing investigators and detectives continue to debate the appropriate criminal offences applicable to matters such as race fixing and show reluctance at exchanging information with non law-enforcement bodies even when there appears to be no specific legislation prohibiting same.

I will expand on these subsequently.

My report and its subsequent findings and recommendations identify that it is time for significant reform in integrity related aspects of racing.

A. Race Fixing

Based on all the information in my possession, and acknowledging that some of the matters referred to Victoria Police or RVL are still pending final outcome, I do not hold the view that race fixing is systemic in this State.

No criminal charges have been laid in regards to any of the information received during this Inquiry.

Only one IR resulted in action being taken by a controlling body, that is, the RVL inquiry into an allegation that a bet had been placed by jockey Damien Oliver on a race in which he was riding at Moonee Valley on 1 October 2010 which is referred to on page 30 of this report. These charges did not relate to race fixing.

Aside from this matter, no charges, whether criminal or disciplinary, have been laid in respect of any of the allegations raised.

All allegations were, or are being, investigated by the relevant body, which included reviews of races and rides nominated as suspicious, interviewing of both licensed persons and potential witnesses and the examination and analysis of betting records.

In Victoria during 2011-12, there were 4,355 races involving 42,919 starters¹³, yet neither police nor racing officials have been able to substantiate any allegations of race fixing to date.

It's clear that there are two major difficulties in substantiating the allegations; a) the difficulty in obtaining evidence of betting activities by those alleged to have been part of the 'arrangements'; and b) whether a jockey's ride can be determined to have assisted the 'orchestrated' result, e.g. 'pulling up', is not always obvious and is a subjective judgement.

These difficulties equally applied to the allegations regarding harness races.

¹³ Australian Racing Fact Book . op. cit. pg. 10

As to greyhound racing, I am at a loss at the rationale behind the IR received alleging that some trainers were ‘pulling up’ greyhounds.

B. Legislated Powers of the Racing Integrity Commissioner

My position was created as a direct result of the Lewis Report to address various integrity issues identified during that review. In my view, the introduction of this position was ‘ground-breaking’ and a major enhancement to the integrity of racing in this state. Only Queensland has chosen a similar path with the recent creation of a Racing Integrity Commissioner position, expected to commence in April 2013.¹⁴

At the time of legislating the various provisions to enable the role of the RIC to meet its function and provide for the necessary powers, the focus was clearly on the ability of the role to have a broad mandate. Similar to other ‘Commissioner’ type roles, there was an expectation that the incumbent would conduct audits, investigate and refer complaints, investigate matters referred, conduct own motion inquiries and report findings and make recommendations. The powers outlined in the Racing Act were clearly tailored to enable these functions to occur.

What was not envisaged however was the evolution of the role in a period during which further integrity issues would become known. As a consequence, the legislated functions and powers have become inadequate to meet new and emerging needs.

B. (1) Protection to persons who provide integrity related information (‘informants’).

Whilst the Racing Act permits persons to provide integrity related information to my office¹⁵, it does not otherwise provide for their protection. For example, there are no provisions in the Racing Act that prevent detrimental action being taken against an informant. Such actions could be both before the provision of information for example, threatening or intimidating an informant; or after, for

¹⁴ *Racing and Other Legislation Amendment Act 2012*. S.113AL; Queensland. Passed 11 December 2012).

¹⁵ *Racing Act 1958*. s 37C

example, civil proceedings for defamation or disciplinary proceedings for industry participants who may be seen to bring their controlling body or code into disrepute.

Of equal risk to the informant is the potential damage to their reputation in the industry, or to their livelihood, if it be known they are providing information.

The current ‘whistleblower’ protections afforded to informants under the *Whistleblowers Protection Act 2001* (the Whistleblower Act) for disclosures to the Ombudsman apply only in a limited way to racing. They do not apply to thoroughbred racing at all.

Firstly, the protections do not apply to information provided regarding the conduct of private persons and entities such as trainers, jockeys, RVL and wagering providers, as the protection is limited to disclosures about public bodies and officers. Secondly, the current system exposes informants to detrimental action. This is because the Whistleblower Act provides for protection only where the disclosure is made to the Ombudsman; or the public body about whom the disclosure relates. Protection would therefore be afforded to a person who disclosed information about a HRV or GRV official (both public bodies) to the Ombudsman or to HRV or GRV respectively, but not if the information was disclosed to the RIC.

This anomaly is contradictory to the role of my office.

Even if the Whistleblower Act was amended to confer protection on persons making disclosures about HRV and GRV to me, the structure of the Whistleblower Act is such that I would be obliged to refer the disclosure to the Ombudsman who would then have discretion as to whether to investigate the disclosure or refer it back to me.

It’s my view that this obligation would interfere with my perceived or actual independence and the nature of my role’s specialist focus area of corruption in racing. These amendments would still not provide for protection for disclosures about bodies or persons that are not public bodies including, significantly for this inquiry, RVL.

To date, I have discharged my duties by developing good working relationships with controlling bodies and industry participants in an effort to build trust and encourage the provision of information and cooperation. This is not sufficient for those with critical integrity related information who feel that providing such information will jeopardise their professional reputation or livelihood in racing.

B. (2) Discharge of investigative powers.

I currently do not have power to compel the production of information or documents to obtain the information necessary for me to conduct effective and thorough investigations.

Whilst the Act provides that I “.....*may do all other things necessary or convenient...*” (16), and therefore I may request information from any person in connection with my functions, there is no legal obligation on that person to provide such information. This has created limitations on my ability to discharge my functions.

There are a number of persons who have information regarding various aspects of the allegations raised during this inquiry. Some have been connected with the police ‘race fixing’ criminal investigations (and therefore have a ‘right to silence’ in respect of the matters being investigated by Victoria Police). Others (licensed persons) have been connected with RVL’s stewards’ inquiries regarding breaches of rules of racing. The current legislation does not enable me to compel the production of information from either of these classes of persons or any other person.

As a consequence, my inquiry was limited to information I have received from those willing to provide the information or from the information legally available to me from RVL and the police.

The other bodies that may investigate issues relevant to race fixing are not able to address the deficiencies in my powers.

As the situation currently exists, licensed persons (including trainers and jockeys) are 'compelled' to appear before their controlling bodies and answer questions regarding breaches of the rules of racing. Whether the controlling bodies have authority over non-licensed persons remains debatable.

Police powers of course apply to both licensed and non-licensed persons. Those investigated by police in relation to a criminal offence have the right to silence.

Those who are interviewed by police as potential witnesses are not compelled to make a statement or give evidence. Additionally, it is not the role of police to interview persons in relation to, or investigate, alleged breaches of the rules of racing.

This creates a situation in the current race fixing inquiry, and generally, where both police and racing controlling bodies have limitations in response to issues relevant to race fixing. This situation is further exacerbated by the restriction on information exchange between organisations.

Adding my own restrictions means there are a number or category of persons who are not compelled to provide information to any of the major authorities charged with an accountability to ensure that the racing industry is free of crime and corruption.

This is clearly an untenable situation, particularly if my role is to have an effective oversight of integrity in the racing industry.

Recommendations

Both of the issues outlined above regarding the powers of my position are able to be addressed through legislative change.

Recommendation 1:

That the *Racing Act 1958* be amended to confer on the position of Racing Integrity Commissioner the powers and privileges of a Board of Inquiry.

The provision of such powers and privileges are regularly conferred on investigative or complaint handling authorities, such as the Health Services Commissioner, Disability Services Commissioner, the Victorian Commission for Gambling and Liquor Regulation, the Suitability Panel¹⁶, the State Services Authority when conducting special inquiries and special reviews¹⁷, and a convenor of a public inquiry under the *Public Health and Wellbeing Act 2008*¹⁸.

Conferring these powers and privileges on the RIC would enhance the current role of this position from a body that receives complaints and generally refers them for investigation to other bodies with relevant powers, to that of an investigative body in its own right.

The associated compulsive powers and privileges could be conferred by amending the Racing Act to provide that certain provisions of the *Evidence (Miscellaneous Provisions) Act 1958* apply to, and in relation to, an investigation by this office. For example, such powers and privileges that have been conferred on the Ombudsman.¹⁹

Such powers and privileges would have enabled me to compel persons believed to be in possession of relevant information regarding the Inquiry to provide such information. Furthermore, the privileges in s 21A of the *Evidence (Miscellaneous Provisions) Act 1958* would ensure that the person holding the office of the RIC would be protected from claims of defamation in relation to statements made during an inquiry (including in any report of an inquiry), which would allow the RIC to freely and frankly report the findings of inquiries.

In making this recommendation, I recommend only the powers and privileges to compel documents and attendance associated with a Board of Inquiry i.e.

- the power to summons a person or document

¹⁶ *Children, Youth and Families Act 2005*, s 117.

¹⁷ *Public Administration Act 2004*, ss 53, 57

¹⁸ *Public Health and Wellbeing Act 2008*, s 51.

¹⁹ *Whistleblowers Protection Act 2001*, s 54(2).

- the power to examine a person on oath
- the provision of penalties for non-attendance, production of documents, refusal to be sworn and refusal to answer questions or produce documents.
- The power to send for a witness or documents

I do not recommend amendments to confer powers and privileges of search and seizure, such as those granted to a Royal Commission.

Recommendation 2:

That the *Racing Act 1958* be amended to confer on the position of Racing Integrity Commissioner, to extend protection to informants.

Such amendment to provide protections similar to those provided under Part 2 of the *Whistleblower Act*, or s 22 of the *Safe Drinking Water Act 2008*.

These include:

- Immunity from civil, criminal and administrative liability (e.g. disciplinary proceedings)
- Exceptions from duties of confidentiality imposed by statute and the common law
- Protection from action for defamation
- Protection from detrimental action taken as a result of the disclosure
- Assurance of confidentiality of information disclosed by creating an offence to disclose except in certain circumstances

C. Relationships with Law Enforcement

The Victorian Racing Industry (VRI), has generally dealt with either the Australian Crime Commission (ACC) or Victoria Police on matters of crime and corruption.

1. National

Whilst Victoria Police is clearly the appropriate body for the VRI in regards to potential criminal matters, the ACC has been both proactive and reactive to integrity related matters.

An example of the oversight role adopted by the ACC is their analysis of organised crime in professional sport²⁰ in which they warn that “*Australian sport is no longer protected by Australia’s geographic isolation...*”²¹ and that “*It is likely that criminal groups and individuals will increasingly exploit the professional sport sector should the existing vulnerabilities not be addressed.*”²²

The ACC’s report mirrored both the findings of a number of international bodies and also the national stance announced by the Sport and Recreation Ministerial Council which had endorsed a national policy on match-fixing in sport and agreed to establish a National Integrity of Sport Unit.²³

Transparency International UK had even greater concerns, reporting, that of a series of studies examining levels of corruption in 23 sectors and institutions, none was more challenging than sport as it had a profound impact in terms of culture and public trust.²⁴

From a national law enforcement perspective, the ACC also took the initiative to enact changes to their legislation (*Australian Crime Commission Act 2002*) to address the major issue of the legal prohibition on the ACC to provide information to non-law enforcement bodies. These amendments, amongst other things, not only now permit the ACC to provide information to statutory

²⁰ Crime Profile Series – Organised Crime in Professional Sport. “*Threats To The Integrity Of Professional Sport In Australia.*” Australian Crime Commission. April 2011.

www.crimecommission.gov.au

²¹ Ibid pg 3

²² Ibid pg 4

²³ Sports and Recreation Ministerial Council. 10 June 2011.

www.dpmc.gov.au/sport/funding/match-fixing/index.cfm

²⁴ Corruption in the UK, Part Two, Assessment of key sectors, Sport, pgs 40-45

www.transparency.org.uk/ti-uk-programmes/corruption-in-the-uk

bodies such as my office, HRV and GRV²⁵, but also to various private bodies such as RVL.²⁶

I congratulate the ACC on these initiatives as the issue of exchange of information with law enforcement continues to be a major concern in the effective combating of crime and corruption in racing.

2. State

Victoria Police disbanded their specialist, dedicated racing unit in the 1990's.

Research indicates this occurred in the mid-1990's²⁷, whilst anecdotal research with previous members of this unit indicates this occurred earlier (1990).

Former members of the 'Racing Squad' advise that it was formed in response to one of Australia's largest robberies, known as the 'Great Bookie Robbery', and involving an armed robbery at the Victoria Club in Queen Street Melbourne in 1976. The 'authorised strength' of the unit was 4 detectives i.e. one Detective Senior Sergeant, a Detective Sergeant and 2 Detective Senior Constables. In the latter part of its existence, the racing squad expanded its focus and was re-named the 'Racing and Livestock Squad'.

Since the 1990's, the provision of investigative and intelligence service regarding racing has been the responsibility of a variety of different areas within the Police Force (e.g. theme desks, Criminal Investigation Units, Purana Task Force). However, there has been no dedicated section tasked with the proactive or reactive responsibility to address racing related crime until the Lewis Review.

The 2008 Lewis Report recommended that the then Chief Commissioner of Police *"....review the existing arrangements in relation to the racing industry*

²⁵ *Crimes Legislation Amendment (Powers and Offences) Act 2012* (No.24, 2012), s. 59AA

²⁶ *Australian Crime Commission Regulations 2002*, Statutory Rules 1984 No. 132 as amended, Schedule 7, Part 1, Item 173.

²⁷ *"A Review of the Literature on Agricultural Crime"*, Report to the Criminology Research Council, Institute for Rural Futures, University of New England, Armidale NSW, August 2001, p 32.

*with a view to replacing the existing 'Theme Desk' with a squad of detectives, under the direction of a senior police officer, dedicated to addressing criminal activity in or associated with the racing industry....*²⁸

An Implementation Working Party (IWP) was established by the then state government, convened by the Department of Justice and comprising senior representatives from each of the racing codes and Victoria Police to analyse the report and advise on implementation.²⁹

In response to the Lewis recommendation, the IWP reported that Victoria Police would enhance its relationship with the racing industry; establish better networks to improve a cooperative response; undertake to work with the (new) Racing Integrity Commissioner; and provide a structural framework for the "...free exchange of information and intelligence..."³⁰

A 'racing squad' was not re-formed. Alternatively, a 'Racing Industry Committee' was created with the role to *"Maintain a strategic focus on crime and emerging trends within the racing industry to enable the Victoria Police to assist in protecting the industry's integrity, free it from criminal influence, and to combat associated criminal activity."*³¹

This committee was chaired by Victoria Police, comprised representatives from Victoria Police, Department of Justice, the three racing codes and first met in October 2009. In April 2010, my office began attending. In total, the Committee met seven times until February 2011. Subsequent meetings were cancelled and the Committee did not meet again. Attempts at developing Memoranda of Understanding (MOU) and processes regarding information sharing between the racing bodies and Victoria Police were unsuccessful.

During 2011 and 2012 Victoria Police interest, in racing related matters specifically and corruption in sport generally, grew exponentially as evidenced

²⁸ Lewis Report. Op.cit. pg.

²⁹ *"Implementing the recommendations arising from the review of Integrity Assurance in the Victorian Racing Industry by Judge Gordon Lewis AM"*. 2008. Department of Justice.

³⁰ Ibid pg 10

³¹ Victoria Police. Racing Industry Committee. Committee Role, Objectives, Composition. (Undated). Distributed 2009.

by the conduct of forums regarding integrity and corruption in sport³² and the creation of a ‘Specialist Community of Practice – Corruption In Sport’ to provide a specialist capability within Victoria Police to respond to issues arising from sport.

In July 2012 a Detective Sergeant commenced in the newly created Racing and Gaming Intelligence Unit. This was a significant appointment as it once again provided the racing industry with an ‘entry point’ in the organisation for racing related matters. Whilst the industry commended this initiative, it still did not address the 2008 Lewis recommendations of a dedicated squad or provide any investigative resources specialised in racing matters.

The recently reported comments by the Chief Commissioner of Victoria Police³³ are also to be applauded. A recognition that the police had lost focus on racing and have a role in providing information to racing bodies is a strong step in developing a stronger law enforcement/racing partnership.

I also congratulate the Chief Commissioner’s leadership on the recent decision to activate his powers to issue exclusion orders under the Racing Act to ensure that those who pose a risk to integrity are not permitted at racetracks.

Despite these recent initiatives, it’s fair to say that the racing industry has been left to deal with crime and corruption, primarily through its integrity staff and raceday stewards and with little or no access to law enforcement intelligence or powers. For their part, stewards have performed above and beyond what could be expected, particularly in light of their limited resources and professional training. In the main, RVL, HRV and GRV staff involved in integrity and steward duties should be congratulated.

The expectations on these personnel to provide both proactive advice and service including drug control, betting analysis, bookmaker supervision,

³² “*Protecting the integrity In Sport Forum*” (Aust.Inst. Of Management; Wed 14 December, 2011); “*Corruption In Sport Symposium*” (Aust. Inst. Of Management, Fri 13 July, 2012).

³³ “*Police to share intelligence to clean up racing. Corruption Allies.*” Herald Sun. 4 Jan 2013. Page 1. Mark Butler and Padriac Murphy

licensing, ownership dispute and reactive duties such as raceday duties, stable inspections, animal identification, enforcement of rules of racing and inquiries, are unrealistic.

Stewards are neither selected nor trained to provide such a broad spectrum of duties. At the same time they are expected to perform professional investigative duties in serious and complex matters but without recourse to resources such as forensic or intelligence specialists.

Of even greater concern is that racing stewards are required to operate independently and impartially, yet report to senior management who, rightly, must operate in a commercial and brand-conscious environment.

The provision of information and intelligence from Victoria Police to the stewards and their organisations continues to be a major source of frustration and disappointment.

So much so, that racing integrity staff have resorted to monitoring media for information including betting activities and jockey names, information they had not been provided by police but were being provided through media reports.

It's clear that there are some legislative prohibitions in play which restrict information sharing for example information obtained from telecommunication interception.³⁴

The *Telecommunications (Interception and Access) Act 1979*, (the 'TIA Act') legislation was specifically developed for criminal law enforcement agencies investigating serious offences and in my view should be reviewed to include provision for law enforcement agencies to provide information to authorised bodies performing enforcement roles similar to that provided for in regards to telecommunication information in the *Telecommunications Act 1997* (the Telecommunications Act).

The Telecommunications Act has broader application than the TIA Act. The Telecommunications Act applies to stored information, that is, information not

³⁴ *Telecommunications (Interception and Access) Act. 1979*

intercepted but retained by telecommunication carriers such as emails, sms and voice mail, whereas the TIA Act applies only to intercepted telecommunication information. The Telecommunications Act provides that stored information can be made available to a broader class of agencies, that is, those who have accountability for civil penalty enforcement and protection of public revenue.³⁵

The legislators appear to have taken a broader view under the Telecommunications Act recognising that information held by telecommunication carriers would also be valuable to other, non-law enforcement agencies (that administer laws imposing pecuniary penalty or relate to the protection of public revenue) by creating a provision under the Telecommunications Act³⁶ for the Commonwealth Attorney General to authorise such agencies to be classed as ‘Enforcement Agencies’.³⁷

It is my view that such a provision should be included in the TIA Act.

In recent months, all three controlling bodies have been so classified and now have access to such information held by carriers such as account holder details and call charge records.

A further legislative consideration for Victoria Police is privacy. As outlined above, Victoria Police is legally prohibited by the TIA Act from disclosing telecommunication intercepted information.

Police, however are not generally prohibited from disclosing information obtained through other intelligence gathering and investigative means. For example ‘privacy’ is often cited by law enforcement as prohibiting disclosure of information without consideration of the application of the various provisions contained within the *Information Privacy Act 2000* (The IPA) .

³⁵ Ibid ss 66

³⁶ *The Telecommunications Act 1997*

³⁷ Ibid ss 276

The IPA provides definitions for ‘*personal information*’³⁸ and ‘*law enforcement agency*’³⁹. These apply to information held by Victoria Police, including information or opinion, recorded in any form, whether true or not, about an individual. The IPA defines a ‘*law enforcement agency*’ to include agencies responsible for activities regarding “.....*prevention, detection, investigation, prosecution or punishment or criminal offences or breaches of a law imposing a penalty or sanction for a breach*”⁴⁰

The collection, use and disclosure of information is related by the *Information Privacy Principles* (The IPPs)⁴¹. The IPA provides that law enforcement agencies do not have to comply with the IPPs if “*it believes on reasonable grounds that the non-compliance is necessary – “(a) for the purposes of one or more of its, or any other law enforcement agency’s, law enforcement functions or activities.....*”⁴² or.....” (c) *in connection with the conduct of proceedings commenced, or about to be commenced, in any court or tribunal; or.....*”⁴³

The IPPs go further to provide that law enforcement agencies may disclose their information if they have reason to suspect that unlawful activity has been, is, or may, be, engaged in and uses that information to report its concerns to relevant persons or authorities⁴⁴ or that the disclosure is reasonably necessary for a variety of reasons which include preventing, detecting, investigating or punishing breaches of a law imposing a penalty or sanction; protecting public revenue; or preventing, detecting, investigating or remedying of seriously improper conduct.⁴⁵

I have obtained advice regarding these provisions from the Victorian Government Solicitor’s Office. After considering their advice I have formed the

³⁸ TIA Act. Op.cit. ss.280

³⁹ *The Information Privacy Act 2000*. s. 3

⁴⁰ *Ibid* ss 3(f)

⁴¹ *Ibid* ss 3(g)(i)

⁴² *Information Privacy Principles*. Schedule 1, *Information Privacy Act 2000*.

⁴³ *Information Privacy Act 2000*. op.cit. s 13. ss(a)

⁴⁴ *Ibid* s13 ss(c)

⁴⁵ *Information privacy principles*. S.2.1 (e)

view that the RIC is a 'law enforcement agency' for the purposes of the IPA. I have made this view and the basis for it available to Victoria Police.

As a consequence, apart from information collected by the interception of telecommunications, there appears to be no reason why, as a general rule, Victoria Police information should be withheld from this office, RVL, HRV and GRV where its disclosure is necessary for one of the functions of the relevant body.

In accepting that there appears to have been reluctance on the part of Victoria Police in providing the detail or source of racing-related information, I also am not aware of any reason why other cooperative approaches which do not require the disclosure of information have not been pursued, for example, co-opting the controlling bodies as part of a joint investigation approach.

The ability of controlling bodies to provide advice and information regarding the racing industry would only enhance police intelligence gathering and the conduct of investigations.

Recommendation 3:

That the Minister approach the Commonwealth Attorney General to seek amendment to the *Telecommunications (Interception and Access) Act 1979 (Cth)* to include provision for law enforcement to provide telecommunication interception information to authorised bodies performing enforcement duties.

Recommendation 4:

That the Minister take all necessary steps to urge the Chief Commissioner of Police to establish a dedicated, specialist investigative unit comprising qualified detectives responsible for racing-related crime and corruption.

Recommendation 5:

That the Minister take all necessary steps to urge the Chief Commissioner of Police to sufficiently resource the Racing and Gaming Intelligence Unit to

enable firstly, the discovery and secondly, the collection, collation and analysis of all racing related information held by Victoria Police with a view to disseminating such information to the appropriate bodies wherever legally permitted.

Recommendation 6:

That the Minister take all necessary steps to invite the Chief Commissioner of Police to conduct a review with the aim of identifying any barrier(s) to the lawful and effective sharing of information between Victoria Police, the RIC and the racing controlling bodies.

D. Legislation Regarding Racing Related Crime

In June 2011, all Australian governments agreed that they had a major obligation to address the threat of match fixing and corruption in sport. In expression of this commitment, the various Sports Ministers implemented a national policy⁴⁶ recognising that the International Criminal Police Organisation (Interpol) had identified that over USD\$140 billion was being generated annually by illegal betting, threatening the credibility of sport around the world.⁴⁷

Part of this national policy and agreement was for each government to pursue a consistent approach to criminal offences in relation to match-fixing, providing an effective deterrent and sufficient penalties to reflect the seriousness of the offences. Each state was to take such action through their Attorney-General.⁴⁸

At the time of writing, only one state (New South Wales) had undertaken this commitment through the introduction of the *Crimes Amendment (Cheating at Gambling) Act 2012*, which took effect on 13 September 2012.⁴⁹

⁴⁶ "National Policy on Match-Fixing in Sport – As agreed by Australian Governments on 10 June 2011."

⁴⁷ *Ibid* pg 2

⁴⁸ *Ibid* pg 3

⁴⁹ *Crimes Amendment (Cheating at Gambling) Act 2012* (NSW), which introduced Part 4ACA Cheating at Gambling into the *Crimes Act 1900* (NSW).

This amendment introduced criminal offences connected not only to racing, but to betting on any event involving conduct that corrupts the outcome. It provides a broad range of corrupt behaviour and imposes a maximum penalty of imprisonment for ten years.⁵⁰

This new legislation also included the same maximum penalty for those who facilitate the conduct that corrupts the event⁵¹ or conceal such conduct.⁵² The new legislation also provides that it is an offence for those who use information of a corrupted event to place a bet themselves, encourage another to bet or communicate the information to another who they know (or ought reasonably to know) would be likely to place a bet. This criminal offence also attracts the maximum sentence of ten years imprisonment.⁵³

Just as significantly, the legislation goes further to include an offence for those who may not be involved in the conduct that corrupts the event, but have 'inside information' regarding the corrupted event to place a bet, encourage another to bet in a particular way or pass the information on to another whom they know (or ought reasonably to know) would bet or be likely to bet⁵⁴. This offence attracts a maximum penalty of two years imprisonment.

These specific criminal offences are welcomed for a number of reasons. Firstly, they remove all doubt on the part of law enforcement regarding what existing legislation applies to corruption in a betting event such as sport generally or racing specifically. For example, currently, in response to a 'race-fixing' allegation, investigators would need to consider a number of criminal offences, such as conspiracy to defraud or obtain financial advantage by deception, neither of which adequately capture the nature of such conduct. Investigators would then need to make a judgement on which offence provided the best fit for the circumstances and would offer the best chance of a successful prosecution.

⁵⁰ Ibid S 193N

⁵¹ Ibid S 193O

⁵² Ibid S 193P

⁵³ Ibid S 193Q

⁵⁴ Ibid S 193Q ss (2)

Secondly, but equally important, is the deterrent value (whether they are licensed persons or not) provided by the maximum sentence of 10 years imprisonment.

Thirdly is the broad scope of the legislation which applies to those who may not be involved in the conduct that corrupts the event, but use the ‘inside information’ they possess. The two year imprisonment sanction for such involvement will clearly act as a deterrent.

Whilst each of the above are key outcomes of the new legislation, perhaps the most effective result is that which it brings to the confidence in the racing industry by the general public. These new laws send a strong message that breaches of the integrity in any betting related event will not be tolerated.

For these reasons, it would be disappointing to Victorians if similar new legislation is not soon introduced here, in a state often described as the lead racing state and ‘sports capital of Australia’. The proposed legislation should be progressed with a sense of urgency.

Recommendation 7:

That the government expedite the introduction of ‘cheating at gambling’ legislation as a major priority.

E. Issues Associated with the Victorian Racing Industry

As referred to previously, a number of issues arose during this Inquiry that are relevant to the three racing codes that make up the Victorian Racing Industry (VRI).

1. Non-Licensed Persons

One of the most critical of these issues is that of a class of persons termed as non-licensed persons or ‘unlicensed persons’.

As part of this inquiry I received a submission from RVL which outlined the essence of their concerns that unlicensed persons were now placed in what

could be considered a regulatory gap, that is, their conduct was outside RVL's oversight as they were not licensed and therefore not required to abide by the rules of racing.

The RVL submission cited the decision of the Victorian Civil and Administrative Tribunal (VCAT) in *Clements v RVL*.⁵⁵

In this case, RVL and subsequently, the RVL Racing Appeals and Disciplinary Board (RADB) had 'warned off' Mr. Clements, a commission agent (a person who places bets on behalf of others). The VCAT decision in favour of Mr. Clements was based on the finding that he had not consented to be bound by the rules of racing and therefore RVL had no power to enforce the 'warning off' provisions of the rules.

The RVL submission to this Inquiry was that VCAT had erred as it had not considered itself to be bound by a number of previous decisions going back to the decision of the Privy Council in *Stephen v Naylor*,⁵⁶ in which the Privy Council had found that a professional punter had"*permitted himself so to act as to bring his actions within their [the Australian Jockey Club's] purview.*"⁵⁷

In handing down its decision, VCAT (constituted by the then President Justice Ross) suggested that the regulatory gap could be remedied by legislative change.⁵⁸

RVL submitted to this Inquiry that the government "...*had no existing plans to address the 'regulatory gap' in legislation...*"⁵⁹ and would not pursue appeals in respect of unlicensed persons as the action would be futile, costly and damaging to public confidence.

⁵⁵ *Clements v Racing Victoria Limited [2010] VCAT 1144*

⁵⁶ *Stephen v Naylor (1937) 37 SR (NSW) 127*

⁵⁷ *Ibid* Lord Roche Pgs. 139-140

⁵⁸ *Clements v Racing Victoria Limited [2010] VCAT 1144, [56]*.

⁵⁹ 'Own Motion Inquiry into Race Fixing Allegations'. Submission by Racing Victoria Limited. Dated 24 September, 2012.

My own understanding is that there is legal support for RVL's position that VCAT erred in law by not applying the *Stephen v Naylor* decision (which has been adopted and applied by other courts such as the Supreme Courts of Victoria and Queensland) and no change in legislation was necessary as the law in this state remains that the rules of racing are binding on unlicensed persons as described in *Stephen V Naylor*.

The consequence of this situation is that RVL have serious doubts as to the authority of the stewards to obtain cooperation or information from unlicensed persons. As a result of media discussion on this topic, it's reasonable to assume that the racing industry is well aware of these doubts.

My own view is that RVL's doubts are justified. The resulting inaction by RVL regarding investigations involving unlicensed persons creates a major concern regarding its ability to address integrity related matters. If RVL were to adopt the view that the VCAT decision in *Clements* has not altered its ability to enforce the rules on unlicensed persons, it's likely that any decision, adverse to the unlicensed person, would be taken to VCAT on the basis of the *Clements* decision. This would expose RVL to the expense and uncertainty of a VCAT proceeding. Secondly, and more importantly, the subsequent media attention given to the perceived lack of stewards' powers and the ability of the industry to deal with unlicensed persons, such as form analysts and commission agents, would further damage the image of racing.

Accordingly, the most effective route to address this matter is to remove all doubt as to the powers of stewards over persons involved in racing.

Recommendation 8:

That the Racing Act be amended to provide that the rules of racing (all codes) apply to, and are binding on, both persons who hold licences, registration, permits etc issued by the controlling bodies *and* also those who attend race meetings or participate in activities connected with racing or wagering on racing (unlicensed persons).

Such amendment to also introduce the proviso that the rules of racing are to apply to, and be binding on, unlicensed persons only if a stewards' inquiry is, or has been initiated, in connection to a race or associated betting activity; and stewards believe on reasonable grounds that the subject of the inquiry may involve a breach of the rules; and the unlicensed person is in possession of information that will assist the inquiry.

I have reviewed a proposed draft amendment prepared for RVL by Ms Rowena Armstrong QC (former State Chief Parliamentary Counsel) and support the suggested legislative change which would follow the approach taken by other racing jurisdictions such as Racing NSW and Racing Queensland.

Note: my recommendation for this change in legislation is only required if my recommendation (see Recommendation 11) regarding the appointment of stewards and integrity staff to statutory positions is not implemented.

2. Jockey Betting.

Betting by jockeys was also identified as a key issue during this inquiry. The issue was raised in various IRs to my office regarding alleged conflicts of interest and improper behaviour by various industry participants and, in part, was a response to front page newspaper articles regarding jockey betting generally⁶⁰ and the RVL inquiry into an allegation that a bet had been placed by jockey Damien Oliver on a race in which he was riding at Moonee Valley on 1 October 2010 (which is referred to on page 30 of this report) and which gained prominence during the period of my Inquiry.

My inquiries revealed that there was a widespread belief, and associated culture of acceptance, that “most jockeys bet”. The general belief was that the betting was not on their own mounts, but on other horses and races and usually following the receipt of ‘inside information’ from “those who should know” , such as other jockeys, trainers and owners. The consensus was that

⁶⁰ “Race-fixing scandal spreads.” The Age. 15 August 2012. By Richard Baker and Nick McKenzie. Page 1

the majority of jockeys who bet do so through betting accounts in the names of their family members or friends and that the higher profile jockeys engage commission agents or form analysts to place their bets.

Jockey betting creates a major concern for the integrity of the sport. Irrespective of the circumstances of a race, the general public and the punter, can be left with nothing but suspicion regarding the efforts of a jockey who has placed a bet either on his own horse or another's. This suspicion is of course compounded should it be discovered that the jockey has organised to place a 'lay bet' (a bet on a horse not to win).

The rules of racing specify which rules are defined as 'serious offences', in respect of which stewards are required to present alleged breaches to the relevant RADB.

At present, betting by jockeys is not categorised in the rules as a serious offence.

Serious offences elevate those breaches in terms of their nature and gravity and alter the stewards' role to inquiry officers and prosecutors, rather than the decision making authority in regards to conviction and penalty.

I am aware of the approach by other racing administrations to only prohibit betting by jockeys in their own races and not on other races. However I am of the view that this does not satisfy the necessary confidence required by the public.

Recommendation 9:

That RVL expedite its intention to alter the offence of a jockey placing a bet from a 'non-serious' offence to a 'serious' offence under the rules of racing (That is, cannot be heard and determined by stewards but must be heard and determined by the Racing Appeals and Disciplinary Board).

Recommendation 10:

That HRV do likewise in regards to the Australian Rules of Harness Racing (ARHR) regarding the offence for a driver to bet on any race in which they participate.

3. Integrity Structures

When this Inquiry was commenced, it was not my intention to examine the integrity structures within each controlling body. However, the information gained during my investigations has fuelled my original concerns when taking office that there is vast disparity in the approach to integrity by the three controlling bodies.

The information gleaned from recent audits of the three controlling bodies has not allayed these concerns.

In essence, RVL, HRV and GRV all employ staff to provide integrity related services through the appointment of personnel selected for designated roles. Some staff are selected for raceday duties, such as stewards, and others for broader integrity related duties such as those performing betting analysis and drug control.

Most aspects regarding these specialist staff vary remarkably across the three codes.

For example:-

- Two of the integrity heads report directly to the organisation's Chief Executive Officer (CEO), whilst the third reports to the Chief Operating Officer (COO)
- One of the integrity heads is also accountable for racing services e.g. grading and member services
- One of the integrity heads also has oversight responsibility regarding animal welfare

- Two of the codes adopt a geographic based distribution of staff performing stewards' duties
- Two of the codes do not employ staff within their integrity teams to perform specialist roles such as form analysis; drug compliance and regulation; and betting analysis

Operationally, the approach to integrity duties also varies significantly. In a recent audit of the three codes' approach to drug control over a nine month period, this variance was evident. For example, the average number of animals tested per race varied from 0.26 in one code to 2.99 in another.⁶¹ The average number of beaten favourites swabbed varied from 2.47 per cent in one code to 23.7 per cent in another.⁶²

There is no structured common approach or cross-code coordination of integrity related issues in the VRI.

The approach to recruitment, selection, induction, training, development, performance management and career development of integrity staff differs greatly across the codes. Similarly, the pay scales, allowances, conditions and rostering have no consistency. Remuneration and career development are major issues as the codes continue to 'poach' from each other to meet individual needs.

There are no cross-code secondment or exchange programs.

The powers of integrity staff and rules of racing vary across the codes. Some stewards are required to know, understand, interpret, apply and enforce all integrity related and raceday related rules, with minimal formalised training. Others are expected to perform investigative duties in complex and serious matters with little recourse to legal or other specialist resources and with minimal experience or background in investigation management.

⁶¹ Office of the Racing Integrity Commissioner, "*Audit of the Controlling Bodies for the year ended 30 June 2012*" McGrathNicol. 2012. (Pending release.)

⁶² Ibid

Of most concern however is the perceived lack of independence of the integrity units in the codes.

Integrity units compete for funding with other parts of the controlling bodies. By their nature, they are seen as ‘cost centres’ as they provide no direct revenue streams but instead incur costs. They have no direct access to budgets but must rely on management to fund their resourcing and operational costs. Stewards for example have limited ability to implement extensive drug testing programs as there are budget restrictions on drug testing costs.

Just as important is the independent authority of the integrity units. As with other parts of the organisation, they report to senior management and defer to same for decision making and authority. Whether by inference or perception, although decisions are made by integrity staff regarding the conduct and management of inquiries, the ultimate authority remains with management.

These views were previously expressed by Judge Lewis in his report⁶³ and partially addressed through the creation within each code of an integrity sub-committee “.....with an independent Chairman, and with a majority of members independent of the Board.....”⁶⁴

Whilst some work has been undertaken by each code in the creation or development of an ‘Integrity Sub Committee’ (ISC), the approach has again been inconsistent and the intention of the Lewis Report regarding independence remains unfulfilled.

For example, two of the codes have the Chairman of the Board of the controlling body sit on the ISC of that code.

One ISC has five members, three of which are members of the Board of the controlling body, including the Chairman of the Board.

⁶³ The Lewis Report. op.cit.

⁶⁴ The Lewis Report. ibid. pg. 12

Another ISC has eight members, seven of which are Board Members, and the eighth is an independent member who does not chair the ISC. The meetings of this ISC are attended by the CEO and other members of the senior management team of the controlling body.

In each of these instances there is a perception of the lack of independence of the ISCs.

The 2008 Lewis Report recommended that a determination be made as to whether integrity should remain a function alongside the commercial and developmental roles of the codes, or whether it should be separately provided and if so, whether those services should be delivered individually or across the codes.⁶⁵

Since that time, particularly since the establishment of this office (1 March 2010), the public perception has been that the controlling bodies have inappropriately influenced the work of the integrity units. For example, the RVL inquiry into an allegation that a bet had been placed by jockey Damien Oliver on a race in which he was riding at Moonee valley on 1 October 2010 (which is referred to on page 30 of my report) attracted major negative public and media criticism of RVL's influence over the stewards' inquiry.

The independence of integrity personnel; disparity of approaches, structures, roles, responsibilities, reporting lines, and operations; and the lack of coordination and cross code cooperation and communication remain key concerns for instilling public confidence in the racing industry.

A number of models exist in various Australian states and internationally regarding the merging of racing codes or racing administrations and the divesting or consolidation of integrity related resources.

It is my view that major reform in regards to racing integrity is now necessary to restore public confidence. The separation of existing integrity staff and

⁶⁵ Lewis Report. Ibid. pg 12

stewards from the three controlling bodies to create a unified, cross code, independent, statutory and appropriately resourced unit is needed.

An independent, cross code body should employ form and betting analysts and compliance specialists and have access to legal advisors. The body should be tasked with general integrity advice and operations such as audits of integrity related activities (selection, nomination, acceptances, grading, barrier/box draws etc); the conduct of investigations; liaison with law enforcement; and raceday operations (such as drug control, animal identification, enforcement of rules of racing etc.)

Whilst the composition and structure of the body would be subject to further discussion and review, I would expect that the body would be overseen by a role in the nature of a 'Director of Integrity', with each of the three Integrity Managers and Chairman of Stewards providing a second tier line of management. All integrity staff and stewards from the three controlling bodies would then form a pool from which resources could be drawn as appropriate.

I would also expect service level agreements to be developed between the independent integrity body and each controlling body specifying the key services to be provided to each code in a partnership model, which would establish the controlling bodies as the key stakeholders with input into strategic and operational plans and performance measurement.

Recommendation 11:

That the *Racing Act 1958* be amended to establish an independent body with responsibility for the integrity processes and systems across the three codes and remove such responsibility from the controlling bodies.

Such statutory body to be conferred all powers and authorities of stewards and integrity staff, including powers to obtain information from non-licensed persons and to include the transfer of current integrity services staff and stewards and existing integrity budgets to the newly formed body.

4. Bookmakers

It goes without saying that information from wagering service providers is critical to the success of investigations regarding betting by industry participants or criminal elements. The relationship between wagering providers and this office and the integrity units of the controlling bodies is a healthy and transparent one, based on legal protocols and information sharing MOUs.

Successful investigations regarding betting activities have resulted from cooperation and assistance from organisations such as Tabcorp, Betfair and corporate bookmakers.

What remains of concern however is the lack of response by a number of bookmakers who operate in Victoria to the request to enter into information sharing MOUs with this office. Over the past two years, my office has communicated with these bookmakers, explaining the powers and functions of the RIC and proposing MOUs to formalise arrangements for the request, receipt, management and use of information from bookmakers. Whilst an MOU is not in itself a legal document, it can provide guidelines and establish a relationship between the two organisations.

Whilst my role does not extend to the licensing and registration of bookmakers, I consider their involvement and contribution to the integrity of racing as vital and intend to bring this matter to the attention of the peak body, the Victorian Bookmakers Association for the purpose of education and awareness.

I also encourage the government to consider the option of introducing an offence under the *Gambling Regulation Act 2003* for wagering service providers to accept a bet from a licensed jockey or a harness driver.

F. National Issues

Racing is recognised as an iconic Australian sport and contributes significant economic benefit to each state.

Whilst other sports have gambling associated with their events, racing is the only sport in which gambling forms its very foundation and ultimately determines its success.

The Coalition of Major Professional and Participation Sports (COMPPS) is a national organisation which consists of the governing bodies of seven sports: Australian Football League; Australian Rugby Union; Cricket Australia; Football Federation Australia; National Rugby League; Netball Australia; and Tennis Australia. One of the roles of COMPPS is to “.....*provide a collective response on behalf of its member sports where their interests are aligned.*”⁶⁶

Sports betting related integrity issues are a major concern for COMPPS and accordingly the members work together to address these issues and represent them on a national basis, such as providing advice to government.

Racing does not have a ‘seat at the table’ in COMPPS, yet has a great deal of knowledge and experience to offer in regards to sports betting and, in turn, would benefit from formal partnerships and communication with the other COMPPS members.

Whilst it’s outside the scope of my role in this inquiry, I will request the Minister to approach COMPPS to accept a racing representative (from ARB, HRA or GA) to be invited to COMPPS meetings at which integrity related matters are discussed.

Whilst racing has no national cross code representation, the recent initiative of Australian Racing Ministers to create a national integrity body is welcomed (The National Racing Integrity Advisory Group; NRIAG). It is timely that the three national governing bodies, ARB, HRA and GA have come together with state government representatives to address racing integrity matters and provide advice to both the government and the racing industry.

I consider a national approach to be timely and necessary.

During my inquiry I received information relevant to other racing jurisdictions, but as a state-based statutory body I was restricted in my ability to make that information available to interstate controlling bodies. This was addressed by

⁶⁶ “*Submission to the Department of broadband, Communications and the Digital Economy. Review of the Interactive Gambling Act 2001*”. 26 October 2011

government by making a Ministerial order to prescribe a number of state and national bodies for the purposes of the disclosure provisions under the Racing Act, thereby enabling disclosure to those bodies.⁶⁷

I would encourage other state racing bodies to seek similar powers and authorisations.

⁶⁷ Ministerial; Order. Victorian Government Gazette. 7 December 2012 regarding disclosure of integrity related information under *The Racing Act 1958*. S.37E (1) (j)

CONCLUSION

In response to the substantial media and public interest regarding race fixing allegations in the Victorian Racing Industry in early August 2012, together with my own view that there was a potential for loss of public confidence, I undertook an Inquiry into race fixing across the three codes.

I invited members of the general public and the racing industry to provide information during August and September 2012 and invited the three racing controlling bodies, RVL, HRV and GRV to make submissions. I also met with a number of persons who were prepared to meet with me personally, formally or informally, overtly or in confidence.

My aim was specifically to identify whether race fixing was systemic issue in this state and generally to consider the broader issues which had been raised during the period of media attention, for example stewards powers over unlicensed persons.

My Inquiry examined a total of 63 IRs, almost a third which were received through our independently managed 'Integrity Hotline' (1300 227 225). Each was reviewed, analysed and where appropriate, referred to the relevant agency.

None of the IRs forwarded to Victoria Police resulted in the laying of charges. One of the IRs forwarded to a controlling body resulted in charges against a jockey for breaches of rules of racing in regards to betting and the use of a mobile phone.

As a result of a detailed analysis of information obtained during this Inquiry, together with the knowledge and information gained during an extensive familiarisation and engagement program since taking up this office in 2010, based on current evidence, I am of the view that race fixing is **NOT** a systemic issue in Victoria.

I have however, identified the need for a number of reforms to address new and emerging needs and restore the public's confidence in the integrity of racing.

To this end, I have made a total of 11 recommendations.

Legislation

I am recommending the following six actions regarding legislation:-

1. Amend the *Telecommunications (Interception and Access) Act 1979* to include provision for law enforcement agencies to provide telephone interception information to authorised bodies performing enforcement duties.
2. Amend the *Racing Act 1958* to confer on RIC the powers and privileges of a Board of Inquiry.
3. Amend the *Racing Act 1958* to confer power and privileges on RIC to provide protection to informants.
4. Amend the *Racing Act 1958* to establish one statutory independent body with accountability for racing integrity across the three codes, remove such responsibility from the controlling bodies, confer all powers and privileges and authorities of stewards and integrity staff, including powers over non-licensed persons, and to transfer current integrity services staff, stewards and existing integrity budgets to the newly formed body.
5. Amend the *Racing Act 1958* to provide that the rules of racing (all codes) apply to, and are binding on all persons, whether licensed or unlicensed (subject to various provisos).

(Note: this recommendation is only required if Recommendation 4 is not implemented.)

6. That government expedite the introduction of 'cheating at gambling' legislation.

Law Enforcement/Victoria Police

I am recommending three actions regarding law enforcement:-

1. That the Chief Commissioner of Police establish a dedicated, specialist racing unit .
2. That the Chief Commissioner of Police resource the Racing and Gaming Intelligence Unit to undertake discovery, collection, collation and analysis, of all racing related information with a view to disseminating to the appropriate bodies, where legally permitted.
3. That the Chief Commissioner of Police initiate a review to identifying the barrier(s) to the sharing of information between the police, the RIC and the racing controlling bodies.

Racing Industry

I am recommending two actions regarding the racing industry.

1. That RVL expedite its intention to alter the offence of a jockey placing a bet from the category of 'non-serious' offence to a 'serious' offence.
2. That HRV do likewise.

Bookmakers

Whilst recommendations regarding bookmakers are outside the scope of my power and authority I request that the Victorian Bookmakers Association provide education and awareness to their members regarding the important role they place in regards to integrity in racing.

I also request that government consider the introduction of an offence under the *Gambling Regulation Act 2003* for wagering service providers to accept a bet from a licensed jockey or harness driver.

National Sports

Again, whilst national matters are outside the scope of my power and authority, I request that the COMPPS accept a racing representative at meetings at which integrity related matters are discussed.

There are also a number of other matters which have arisen during this Inquiry which are relevant to the integrity of racing. For example, the stewards power to 'stand down'; the current appeals and disciplinary process; drug control in racing; and the issue of granting stays of proceedings. These are addressed in other reports being prepared by my office during 2013.