



COMMISSIONER'S REPORT

Public summary report of own motion inquiry conducted under section 37B(1)(g) of the Racing Act 1958 (Vic) into the circumstances of Harness Racing Victoria's investigation of race fixing against licensed participants relating to Race 4 at Cobram on 22 June 2015

Background

Functions and powers of the Racing Integrity Commissioner

1. The Racing Integrity Commissioner (the **Commissioner**) is established under section 37A of the *Racing Act 1958* (Vic) (the **Act**).
2. The role of the Commissioner was established under the Act to protect the integrity of the Victorian racing industry by providing independent oversight of the controlling bodies that regulate each racing code, and thereby provide assurance to industry participants and the public that Victorian racing maintains the highest possible standards of integrity.¹ Harness Racing Victoria (**HRV**) is the controlling body² for harness racing in Victoria.
3. The Commissioner's prescribed functions include the conduct of own motion inquiries that do not relate to any specific complaint and may include an investigation into systemic issues in racing under section 37B(1)(g) of the Act.
4. The Commissioner is not a judicial or disciplinary body and cannot determine the legal rights and claims or remedies of the controlling bodies, industry participants or other persons. The Commissioner is also not an appeal body and cannot review the decisions of stewards' inquiries, the Victorian Racing Tribunal, other tribunals and courts, or the actions of any external body or agency.
5. In conducting an inquiry, the Commissioner may exercise powers under the Act, including compelling the production of documents and other things or attendance of witnesses, and taking evidence on oath.³ These powers extend to licensed participants and the employees of controlling bodies
6. The nature of the Commissioner's functions and powers means that the conduct of any inquiry is necessarily inquisitorial. The Commissioner's role is to establish facts,

¹ Second Reading Speech, Racing Legislation Amendment Act (Racing Integrity Assurance) Bill, 29 July 2009

² Section 3 of the Racing Act

³ Sections 37BB to 37BD of the Racing Act

identify any shortcomings in racing integrity processes and systems, conduct and/or systemic issues, and make recommendations about how they may be addressed.

7. Any conclusions drawn are based on proof of relevant facts to the civil standard, on the balance of probabilities and applying the principles set out in *Briginshaw*.⁴ Adverse findings or comments against any entity or individual are only made on the basis of what was known or should reasonably have been known or done at the time, and only where the evidence supports a finding that there has been a material departure from the requisite standard.

Circumstances giving rise to own motion inquiry

8. In 2015, HRV conducted an investigation into race fixing allegations against licensed participants relating to Race 4 at Cobram on 22 June 2015, the winning horse's improved performance, its training regime, and the betting on the race.
9. In November 2015, HRV referred the matter to police who conducted a criminal investigation concurrently with HRV's ongoing investigation into alleged breaches of the Australian Harness Rules of Racing (**AHRR**).
10. On 11 January 2017, four participants were charged by police with offences of engaging in conduct that corrupted, or would corrupt, a betting outcome under the *Crimes Act 1958* (Vic). HRV charged a fifth participant with 11 breaches of the AHRR relating to information provided to stewards in the HRV investigation on 8 March 2017.
11. A 10-day contested hearing was held in relation to the criminal prosecution, during which police withdrew charges against one of the participants. The remaining three participants were found guilty of all charges on 17 September 2018. The participants appealed the Magistrate's findings to the County Court. On 3 November 2021, the County Court found that all had 'no case to answer' and the charges against them were dismissed.
12. Over the following days and weeks, the Commissioner's office received enquiries about the HRV investigation. Their considerable disquiet was echoed by racing media outlets and individuals connected with the Victorian harness racing industry on various social media platforms.
13. In December 2021, the Commissioner received a complaint about the HRV Investigation. The nature of the allegations in the complaint raised the prospect of overlapping jurisdiction between the Commissioner and another independent

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336

statutory body. In February 2022, the Commissioner was informed by the other body that it would not investigate the complaint.

14. The Commissioner assessed the complaint, industry concerns and the evidence from the criminal prosecution, and considered that they raised issues about the integrity processes, systems, governance, decision-making and conduct of HRV. Following consultation with HRV, the Commissioner determined to conduct an own motion inquiry into the issues on 9 March 2022.

Inquiry summary

15. Due to the nature of the Commissioner's role and functions, the primary purpose of the inquiry was to assess relevant integrity processes and systems that had bearing on the HRV investigation. Additionally, the inquiry was conducted to address specific complaints and concerns.
16. The Commissioner issued 19 statutory notices requiring licensed participants and harness racing administrators to produce documents, and/or attend and give evidence, during the course of the inquiry.
17. This resulted in some 4,000 records being produced and examined by the inquiry, including 1,200 documents from HRV alone. The inquiry also examined 32 days of transcripts from various court proceedings related to the criminal prosecution.
18. Over 15 hearing days, 18 participant and administrator witnesses gave sworn evidence before the Commissioner. All witnesses were afforded an opportunity to provide a written submission to the inquiry. A total of four submissions were received.
19. Other persons that do not fall within the scope of the Commissioner's powers were invited to provide relevant information. As a result, another 31 industry sources were spoken to, for background and context. They provided general information to the inquiry about wagering and harness racing operations.
20. In making the summary findings set out on the next page, the Commissioner has had regard to all this information and material. Of note, the Commissioner has no jurisdiction to review the decisions and actions of the courts, or other agencies involved in this matter, or make comment or pass judgment on the guilt or innocence of any person.
21. To preserve the integrity of HRV's integrity operations, the summary findings do not purport to identify all of the evidence obtained. The absence of reference to any specific aspects does not infer that it was not considered.

Summary findings

Complaints about individual conduct

22. On the available evidence, complaints about the conduct of individuals could not be substantiated, and no adverse findings are made against any person in this matter.

HRV integrity decision-making, systems and processes

23. It was appropriate for HRV to commence an investigation into race fixing allegations and report concerns of participants' potential criminal conduct to police.
24. It is acknowledged that HRV has made significant improvements to its integrity processes and systems since the race fixing investigation commenced in 2015. However, the inquiry identified shortcomings in relation to HRV's integrity processes and systems for–
- the monitoring and oversight of the integrity department's operational decision-making, investigation processes and systems, and assessment and management of risk
 - the implementation of relevant corporate policies and procedures in the integrity department, including related training of integrity staff
 - welfare and other support provided to participants and staff who are involved in investigations, and court and tribunal proceedings.

Recommendations

25. HRV has indicated that it accepts the Commissioner's findings in this matter.
26. The Commissioner is working with HRV to address the above shortcomings, to ensure continuous improvement in HRV's integrity governance, processes, systems and management of risk. Given the nature of these issues, the Commissioner does not intend to make any recommendations in this matter public.

Conclusion

27. The success of harness racing is built on the social licence and excellent reputation the industry enjoys. The faith that participants and public have in the integrity of the sport is integral to this. The inquiry was not conducted to assess the guilt or innocence of any participant, or review decisions made by the criminal courts. Rather, it was undertaken to independently assess HRV's integrity processes, systems, decision-

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making, and allegations about the conduct of individuals during the race fixing investigation, to identify areas for improvement.

A handwritten signature in blue ink, appearing to read 'Sean Carroll', with a large loop at the end.

SEAN CARROLL

Racing Integrity Commissioner

8 June 2023

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