



14 October 2024

BY EMAIL

The Hon. Scott Farlow MLC
Committee Chair
Select Committee of the Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Farlow MLC

Select Committee into the Proposal to develop Rosehill Racecourse – Questions on Notice to Dr Saranne Cooke

I refer to the questions taken on notice when I appeared before the Select Committee on Thursday 12 September 2024.

As set out in the letter dated 11 October 2024 from Racing NSW General Counsel, Mr Pete Sweney, sent on my behalf in respect of the Supplementary Questions, I remain ready and willing to assist the Committee in answering those questions posed by the Committee that are within the Committee's powers and are in appropriate form.

I respond as set out below.

[Page 67 Uncorrected Transcript – 12 September 2024](#)

Question:

How much are you spending overall on the due diligence for the ATC proposals, which are not just about the Brick Pit but also Horsley Park, and of course Rosehill itself?

Response:

The corporate advisory firm, Moelis Australia, has been engaged to undertake the due diligence in respect of the proposal for the sale of Rosehill including funding options, revenue and alternate sites for racing. Confidentially, Moelis Australia is to receive a fee of \$250,000.

[Page 68 Uncorrected Transcript – 12 September 2024](#)

Question:

What is the view of RICG about the sale of Rosehill and have they considered it yet?

Response:

The due diligence is still being undertaken. Until the due diligence has been completed, there is no information to be provided to RICG for its consideration.

[Page 69 Uncorrected Transcript – 12 September 2024](#)

Question:

What are the delegated authorities that the board of Racing NSW have given to Mr V'landys? If there is a list and documentation in terms of that protocol, if you could table those.

Question:

When did Mr V'landys last have his contract reviewed? Can you explain the performance review process that you undertook at that time?

Response:

For the reasons set out in more detail in Mr Sweney's letter, the questions taken on notice found on page 69 are not questions that are within the Committee's powers and are in appropriate form. Accordingly, in the circumstances, I do not consider that I am obliged to, nor will I, provide a response to those questions.

Further, the statement by the Hon. Cate Fahrman MLC that "*This is an inquiry into Rosehill Racecourse, but also other issues*", suggesting that the inquiry is into matters unrelated to Rosehill Racecourse, is not supported by the Terms of Reference.

Accordingly, I invite the Chair of the Committee to take this into account and determine the appropriate way to proceed.

[Page 70 Uncorrected Transcript – 12 September 2024](#)

Question:

Is there a whistleblower policy at all? Can you provide that to the Committee, please, on notice?

Response:

This question falls outside the Terms of Reference. However, given that this information has previously been provided to the Select Committee as part of this inquiry, please find **attached** a copy of the Racing NSW Whistleblower Policy.

The questions below are not directed at matters within the Committee's terms of reference, nor are they a legitimate question or inquiry consistent with the scope of the Committee's powers. However, given the information has previously been provided as part of this inquiry, please find below relevant information.

Question:

Do you know how often that committee meets (Integrity Assurance Committee)?

Response:

As set out in section 23A of the *Thoroughbred Racing Act 1996* (NSW), the IA Committee has a statutory duty to investigate complaints made to the IA Committee in respect to the exercise of functions by a racing official relating to horse racing unless the IA Committee considers the complaint is frivolous, vexatious or not made in good faith, trivial or does not relate to the exercise of functions by a racing official in corrupt, improper, or unethical manner. The IA Committee meets when a complaint is received to consider and determine whether investigation of the complaint is required.

Question:

How many times that (Integrity Assurance) Committee has met within the last two or three years?

Response:

I understand that the Integrity Assurance (IA) Committee has met on one occasion, being 1 December 2023.

Question:

How often does the (Integrity Assurance) Committee report to the board?

Response:

In accordance with section 23B(1) of the *Thoroughbred Racing Act 1996* (NSW), after investigating a complaint, the Integrity Assurance (IA) Committee must provide a report in writing of the results of the investigation of a complaint to Racing NSW and the Minister if satisfied that those results indicate that there has been a contravention of this or any other Act in relation to the conduct of horse racing or a contravention of the code of conduct adopted by Racing NSW under section 11A.

There have not been any such reports to the Board in the last three years.

Yours sincerely
RACING NSW

**DR SARANNE COOKE
CHAIRMAN**



Title of Policy:	Date Effective: 1 January 2020	Page 1 of 7
Racing NSW Whistleblower Policy	Reviewed: 2 May 2022	Responsible Person: Mr Peter V'landys AM
Issued by: Racing NSW		

INTRODUCTION

The Board of Racing NSW is committed to operating legally (in accordance with applicable legislation and regulation), properly (in accordance with organisational policy and procedures), and ethically (in accordance with recognised ethical principles). Employees are expected to cooperate with the organisation in maintaining legal, proper, and ethical operations, if necessary by reporting non-compliant actions by other people. Employees who do assist in maintaining legal, proper, and ethical operations should not be penalised in any way. Likewise, industry participants who assist Racing NSW in regulating the industry to a high standard by reporting matters to Racing NSW are encouraged to do so and should do so without fear of reprisal from either their employers, colleagues or fellow participants. Accordingly this Policy extends not only to Racing NSW and its employees but also to industry participants and employees, officials and directors at Clubs.

PURPOSE

The purpose of this policy is to:

- a) encourage the reporting of matters that may cause harm to individuals or financial or non-financial loss to Racing NSW or damage to its reputation;
- b) enable Racing NSW to deal with reports from whistleblowers in a way that will protect the identity of the whistleblower and provide for the secure storage of the information provided;
- c) establish the policies for protecting whistleblowers against reprisal by any person internal or external to the entity;
- d) provide for the appropriate infrastructure;
- e) help to ensure Racing NSW maintains the highest standards of ethical behaviour and integrity.
- f) Encourage the reporting of matters and conduct to Racing NSW which may harm the reputation of Racing NSW, a Race Club or otherwise cause reputational damage to the thoroughbred industry or bring the industry and/or its participants into disrepute, in the sole reasonable opinion of Racing NSW.

POLICY

Concerns regarding illegal or corrupt behaviour

Where an employee of Racing NSW believes in good faith on reasonable grounds that any other employee, volunteer, or contractor has breached any provision of the general law that employee must report their concern to

- their supervisor: or, if they feel that their supervisor may be complicit in the breach,
- the Racing NSW CEO: or, if they feel that the Racing NSW CEO may be complicit in the breach,
- the organisation's nominated Whistleblower Protection Officer; or, if they feel this to be necessary,
- a person or office independent of the organisation nominated by the organisation to receive such information, or
- the duly constituted authorities responsible for the enforcement of the law in the relevant area.

In the case of industry participants, where a participant believes in good faith on reasonable grounds that any other employee, volunteer, or contractor has breached any provision of the general law that employee should report their concern to an officer of Racing NSW, and request that the matter be referred to the appropriate officer for investigation as delegated by the Racing NSW CEO.

The person making their concern known shall not suffer any sanctions from the organisation on account of their actions in this regard provided that their actions

- are in good faith, and
- are based on reasonable grounds, and
- conform to the designated procedures.

Any person within the organisation to whom such a disclosure is made shall

- if they believe the behaviour complained of to be unquestionably trivial or fanciful, dismiss the allegation and notify the person making the allegation of their decision;
- if they believe the behaviour complained of to be neither trivial nor fanciful, ensure that the allegation is investigated, a finding is made, and the person making the allegation is informed of the finding.

Any such investigation shall observe the rules of natural justice and the provisions of procedural fairness.

Disclosures may be made anonymously, and this anonymity shall as far as possible be preserved by the organization insofar as it is requested by the whistleblower.

Concerns regarding improper or unethical behaviour

Where an employee of Racing NSW or industry participant believes in good faith on reasonable grounds that any other employee, volunteer, contractor or participant has breached any provision of the organisation's constitution, or its bylaws, or its

policies, or its code of conduct, or generally recognised principles of ethics, that employee or participant may report their concern to

- their supervisor: or, if they feel that their supervisor may be complicit in the breach,
- the Racing NSW CEO or one of his staff with delegated authority: or, if they feel that the Racing NSW CEO may be complicit in the breach,
- a person or office independent of the organization (such as Racing Australia) nominated by the organisation to receive such information.

The person making their concern known shall not suffer any sanctions from the Racing NSW on account of their actions in this regard provided that their actions

- are in good faith, and
- are based on reasonable grounds, and
- conform to the designated procedures.

Any person within the organisation to whom such a disclosure is made shall

- if they believe the behaviour complained of to be unquestionably trivial or fanciful, dismiss the allegation and notify the person making the allegation of their decision;
- if they believe the behaviour complained of to be neither trivial nor fanciful, ensure that the allegation is investigated, a finding is made, and the person making the allegation is informed of the finding.

Any such investigation shall observe the rules of natural justice and the provisions of procedural fairness.

Disclosures may be made anonymously upon request, and this anonymity shall as far as possible be preserved by the organisation.

RACING NSW WHISTLEBLOWER PROCEDURES

RESPONSIBILITIES

The organisation's Board is responsible for adopting this policy, and for nominating the organisation's Whistleblower Protection Officer.

The organisation's CEO is responsible for the implementation of this policy.

All staff, participants and all volunteers are responsible for reporting breaches of general law, organisational policy, or generally recognised principles of ethics to a person authorised to take action on such breaches.

DEFINITIONS

A whistleblower is a person (being a director, manager, employee or contractor of Racing NSW or industry participant who, whether anonymously or not, makes, attempts to make or wishes to make a report in connection with reportable conduct and wishes to avail themselves of protection against reprisal for having made the report.

Breaches of general law, organisational policy, or generally recognised principles of ethics include:

- corrupt conduct
- fraud or theft
- tax evasion
- official misconduct
- maladministration
- harassment or unlawful discrimination
- serious and substantial waste of public resources
- practices endangering the health or safety of the staff, volunteers, or the general public
- practices endangering the environment.

Complaints regarding occupational health and safety should where possible be made through the organisation's occupational health and safety procedures.

PROCESSES

External reporting entities

The Board may nominate external persons to whom or agencies to which disclosures may be made under the protections offered under this policy. Where such a nomination is made, staff and volunteers should be informed by any appropriate method.

Reporting

Where an employee of Racing NSW or industry participant believes in good faith on reasonable grounds that any other employee, volunteer, contractor or participant has breached general law, organisational policy, or generally recognised principles of ethics, that employee or industry participant must report their concern to

- their supervisor: or, if they feel that their supervisor may be complicit in the breach,
- the CEO or one of his staff with delegated authority: or, if they feel that the CEO may be complicit in the breach,
- the organisation's nominated Whistleblower Protection Officer, or
- a person or office independent of the organisation nominated by the organisation to receive such information, that person or office being Racing Australia; or (where a breach of general law is alleged)
- the duly constituted legal authorities responsible for the enforcement of the law in the relevant area.

These procedures do not authorise any employee or industry participant to inform commercial media or social media of their concern, and do not offer protection to any employee who does so.

Any person reporting such a breach should be informed that

- as far as lies in the organisation's power, the employee or industry participant will not be disadvantaged for the act of making such a report; and
- if the complainant wishes to make their complaint anonymously, their wish shall be honoured except insofar as it may be overridden by due process of law; however,
- reporting such a breach does not necessarily absolve the complainant from the consequences of any involvement on their own part in the misconduct complained of.

Any such report should where possible be in writing and should contain, as appropriate, details of

- the nature of the alleged breach;
- the person or persons responsible for the breach;
- the facts on which the complainants's belief that a breach has occurred, and has been committed by the person named, are founded;
- the nature and whereabouts of any further evidence that would substantiate the complainant's allegations, if known.

Evidence to support such concerns should be brought forward at this time if it exists. The absence of such evidence will be taken into account in subsequent consideration of whether to open an investigation into the matter. However, absence of such evidence is not an absolute bar to the activation of the organisation's investigative procedures. The existence of such a concern is sufficient to trigger reporting responsibilities.

In contemplating the use of this policy a person should consider whether the matter of concern may be more appropriately raised under either the organisation's constitutional grievance procedures or its disputes resolution policy.

Anonymity

If the complainant wishes to make their complaint anonymously, their wish shall be honored except insofar as it may be overridden by due process of law.

The complainant should, however, be informed that the maintenance of such anonymity may make it less likely that the alleged breach can be substantiated in any subsequent investigation.

Where anonymity has been requested the complainant is required to maintain confidentiality regarding the issue on their own account and to refrain from discussing the matter with any unauthorized persons.

Investigation

On receiving a report of a breach, the person to whom the disclosure is made shall

- if they believe the behaviour complained of to be unquestionably trivial or fanciful, dismiss the allegation and notify the person making the allegation of their decision
- if they believe the behaviour complained of to be neither trivial nor fanciful, put in motion the investigation process described below.

The person to whom the disclosure was made shall notify the CEO, who shall be responsible for ensuring that an investigation of the charges is established and adequately resourced.

Terms of reference for the investigation will be drawn up, in consultation with the CEO, to clarify the key issues to be investigated.

An investigation plan will be developed to ensure all relevant questions are addressed, the scale of the investigation is in proportion to the seriousness of the allegation(s) and sufficient resources are allocated.

Strict security will be maintained during the investigative process.

All information obtained will be properly secured to prevent unauthorised access.

All relevant witnesses will be interviewed and documents examined.

Contemporaneous notes of all discussions, phone calls and interviews will be made.

Where possible, interviews will be taped.

The principles of procedural fairness (natural justice) will be observed¹. In particular, where adverse comment about a person is likely to be included in a report, the person affected will be given an opportunity to comment beforehand and any comments will be considered before the report is finalised.

The person or persons conducting the investigation shall be as far as possible unbiased.

Findings

A report will be prepared when an investigation is complete. This report will include

- the allegations

¹ Natural justice and procedural fairness do not require that the person affected be informed of the identity of the person making the initial disclosure, unless that communication constitutes part of the evidence relied upon in making the eventual finding.

- a statement of all relevant findings of fact and the evidence relied upon in reaching any conclusions
- the conclusions reached (including the damage caused, if any, and the impact on the organisation and other affected parties) and their basis
- recommendations based on those conclusions to address any wrongdoing identified and any other matters arising during the investigation.

The report will be provided to the person making the allegation (with, if necessary, any applicable confidentiality stipulations).

PROTECTION OF INFORMANT

Where the investigation has found that the person making the allegation made it in good faith on reasonable grounds, the CEO shall designate an officer to be responsible for ensuring that the person suffers no employment-related disadvantage on account of their actions in this matter and to provide additional support for the person where necessary.

PROTECTION OF TAX WHISTLEBLOWERS

If you are a tax whistleblower, it is illegal for someone to disclose your identity, or information that is likely to lead to your identification. However, you may consent to sharing your identity. If your identity needs to be disclosed to an authorised body, such as the ATO or an auditor to assist in the investigation, the authorised body is required to treat the information you disclosed as confidential. They are also required to take all reasonable steps to reduce the risk that your identity will be revealed.

Your identity is protected in court proceedings. Your identity, or documentation that contains or is likely to uncover your identity, is not required to be disclosed to a court or tribunal. The exception to this is if the court thinks it is necessary for your identity to be revealed in the interests of justice.

Disclosures to your lawyer for the purposes of obtaining legal advice or representation in relation to tax whistleblower law is protected, even in the event where you do not qualify to be an eligible tax whistleblower.

You are protected from civil, criminal and administrative liability in relation to your disclosure. For example, Racing NSW can't sue you or terminate your employment for breaches of contract or confidentiality.

Any information incriminating you will not be treated as admissible in evidence against you in criminal or penalty proceedings. If your disclosure reveals a breach in your personal tax affairs, such as undeclared income, you may have immunity against any criminal or penalty proceedings. This immunity does not prevent us from issuing a tax assessment or imposing an administrative penalty in respect of your own tax liability. However, we may treat your disclosure as a voluntary disclosure in determining your liability for penalties in respect to any unpaid tax.

If you make a disclosure, you are protected from detrimental conduct. It is illegal for anyone to cause detriment to you in relation to a disclosure, or a suspected disclosure. For example, you can't:

- be dismissed, harassed or intimidated, harmed or injured (including psychologically) by your Racing NSW

- have your property, business or your financial position damaged.

Compensation and other remedies

You can receive compensation if a court finds you suffered detriment in relation to your disclosure. If you were victimised and suffered loss, damage or injury as a result of it, a court may order the person causing you detriment to compensate you if it thinks appropriate. Examples of the remedies available include:

- paying damages
- reinstating employment
- an injunction to prevent or stop detrimental conduct
- apologising.

HOW TO MAKE A DISCLOSURE TO THE ATO

Use the [tip-off form](#) to make a disclosure to the ATO. It only takes a few minutes and your information is treated confidentially. You don't have to give your personal details if you don't want to.

Remember to make note of the reference number when you submit your form to us – you will need to quote the number if you want to add any further information later.

You can also:

- complete the tip-off form in the contact section of the [ATO app](#)
- phone 1800 060 062
- [Report unpaid super contributions](#) from your employer (but not about another business)
- write to the ATO – mark all letters 'in confidence' and mail to:

Australian Taxation Office
Tax Integrity Centre
Locked Bag 6050
DANDENONG VIC 3175

RELEVANT LEGISLATION

Australia – [Corporations Act 2001](#)

[Public Interest Disclosure Act 2013](#)

NSW – [Public Interest Disclosures Act 1994](#)