



**2008 INDEPENDENT REVIEW OF THE REGULATORY  
OVERSIGHT OF THE NSW RACING INDUSTRY**

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**REPORT**

**MALCOLM SCOTT  
JUNE 2008**

# STATE CHAMBERS

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## **INDEPENDENT REVIEW OF THE REGULATORY OVERSIGHT OF THE NEW SOUTH WALES RACING INDUSTRY - 2008**

4 June 2008

The Honourable Graham West MP  
Minister for Gaming and Racing  
Minister for Sport and Recreation  
Parliament House  
SYDNEY

Dear Minister

On 23 November 2007 you confirmed in writing my appointment to chair a Review into the regulatory oversight of the New South Wales Racing Industry. Specifically, I was requested to:

*“Examine whether there are adequate powers and procedures in place for the effective and efficient regulatory oversight of the three codes of racing in New South Wales by their respective industry controlling bodies.”*

I have completed the Review and my Report is herewith submitted for your consideration.

As part of the Review process notices were placed in the Sydney Morning Herald and Daily Telegraph on Friday 15 February 2008 and again in the separate “*Form*” section of the Sydney Morning Herald on Friday 22 February 2008 inviting the public and any interested parties to make submissions by 28 March 2008. As it transpired a number of parties sought an extension of time beyond 28 March 2008 in which to tender their submission. Such requests were agreed to.


A total of 27 submissions were received.

Also as part of the Review process I was given the opportunity to observe race day activities at a variety of venues. This opportunity allowed me to observe the tasks being performed by a wide variety of persons including stewards, judges, barrier attendants, starters, lure drivers and mobile starters. My attendance also allowed me to receive through conversation the views of a variety of people deeply concerned with the running of individual clubs as well as the proper organisation and operation of the racing industry as a whole. Such personal consultation was invaluable and I am indebted to all those people who so freely gave of their hospitality and time to assist me.

I also had the opportunity to meet members of the Racing Appeals Tribunal as well as members of the Racing New South Wales Appeal Panel. I have also had several conversations with his Honour Gordon Lewis. His Honour is conducting a Review of a similar nature to mine relevant to the Victorian racing industry.

My task of review would not have been possible without the assistance given to me by officers of the Office of Liquor Gaming and Racing. I wish to thank Mr John Whelan and Mr Paul DeVeaux for their assistance, particularly in the early stages of my Review. I would like to express my tremendous gratitude to Mr Frank Marzic for his invaluable time and assistance in helping me weave my way through what at times seemed to be a series of problems akin to a maze.

Yours sincerely



**MALCOLM SCOTT**  
Barrister at Law

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## **CHAPTER 1**

### **Purpose of Review - Terms of Reference**

The Minister for Gaming and Racing requested me to conduct an independent review to examine whether there are adequate powers and procedures in place for the effective and efficient regulatory oversight of the three codes of racing in NSW by their respective industry controlling bodies.

The terms of reference for the Review are to:

1. Investigate the effectiveness of current legislation, the Rules of Racing and administrative procedure underpinning the integrity regulation of the three codes;
2. Identify potential improvements in regulation including by amendment of legislation, the Rules of Racing, related administrative procedure and the role of stewards;
3. Examine current education, training requirements and professional standards for stewards and any potential improvements;
4. Examine existing career paths available to stewards, and opportunities for employment in the racing industry;

### **Background to Review**

This Review has its origins in recommendation 13 of the *2006 Independent Review of the Thoroughbred Racing Act 1996 (Mr Ken Brown AM, September 2006)*.

Recommendation 13 of the Brown Review provides:

13. *It is recommended that the Office of Liquor, Gaming and Racing coordinate the implementation of an appropriate review into the powers and procedures of controlling bodies in respect of the regulatory oversight of the racing industry across the three codes.*

The Brown Review (page 41) noted that there might be shortcomings in the powers and procedures of racing controlling bodies in relation to the issue of 'unlicensed' persons.

*Licensed persons are expressly bound by the Rules of Racing and subject to the procedures and findings of the stewards and the associated Appeals Panel and Tribunal. In some circumstances, certain unlicensed persons may be held by implication to have subjected themselves to the same regime. However, the issue is not well defined and clarification would be important, for example, in relation to the behaviour of race course attendees or the behaviour of unlicensed persons in relation to the 'conduct prejudicial' provisions.*

The terms of reference for this Review are wider than that ambit and include examination of the statutory basis that underpins the racing controlling body functions, the role of stewards in the administration of the Rules of Racing, and employment and training issues as they apply to stewards across the three codes of racing.

A companion to this Review is the Five Year Review of the Greyhound Racing Act 2002 and the Harness Racing Act 2002.

The Five Year review is a statutory review which requires the Minister to review the legislation after five years of operation to examine whether the policy objectives of the legislation remain valid and whether the terms of the legislation remain appropriate for securing those objectives.

The intention is that this Review and the Five Year review be released and read together, and that they be exposed for comment prior to formulating a response which may, as appropriate, be reduced to legislative form.

Overall, the context of this Review is that it is being conducted during a period of reform to the legislation which provides for the control and regulation of the three codes of the racing industry.

In relation to the thoroughbred racing code, there has been significant reform and review as follows:

- The *1995 Review of Thoroughbred Racing in New South Wales (Mr Ian Temby QC, October 1995)* followed on from the 'Jockey Tapes' affair and led to the establishment of Racing NSW (formerly the *Thoroughbred Racing Board*) as the controlling body for thoroughbred racing in NSW pursuant to the *Thoroughbred Racing Act 1996*.
- The *2006 Independent Review of the Thoroughbred Racing Act 1996 (Mr Ken Brown AM, September 2006)* certain recommendations of which have assisted in clarification of the powers and functions of Racing NSW by way of the *Thoroughbred Racing Amendment Act 2008*.
- The 2008 Alan Cameron review into wagering which will consider all facets of wagering including the significance of racing as an industry and an employer, new technology and wagering, and the impacts on wagering from national competition policy.

In relation to the greyhound and harness racing codes, there has also been significant reform and review as follows:

- The 'commercial' and 'regulatory' controlling body functions were separated by the *Greyhound Racing Act 2002* and *Harness Racing Act 2002*, following a review of the composition and activities of the former controlling bodies for those two codes of racing. The Five Year review of those two Acts is being undertaken at the same time as this Review, as mentioned above.

- The amalgamation of the greyhound and harness racing regulatory functions followed a feasibility study in 2003, and was formalised by the establishment of the *Greyhound and Harness Racing Regulatory Authority (GHRRA)* by the enactment of the *Greyhound and Harness Racing Administration Act 2004*.
- The activities of the *GHRRA* were in 2007/08 the subject of a performance audit by the *Internal Audit Bureau*, and an audit of the amalgamation process by the *NSW Audit Office*. The audits were set in train at the request of the Minister for Gaming and Racing following industry concern about the cost and delay of the amalgamation process.

In addition to the abovementioned three points in relation to the greyhound and harness racing codes, it would be appropriate – for the purpose of a regulatory oversight review – to mention two other reviews undertaken by the *Independent Commission Against Corruption (the ICAC)*.

In 1996, the *ICAC* investigated allegations of race fixing involving senior stewards of the Harness Racing Authority. That investigation disclosed no credible evidence to support the allegations of corrupt conduct made against the Chairman of Stewards, and others.

In 2000, the *ICAC's Greyhound Report – Investigation into aspects of the greyhound racing industry* found that the Chief Steward had acted corruptly by helping to fix races in collusion with certain owners and trainers. The report made 16 recommendations, as follows:

1. *That the option of combining the regulatory roles of the three racing bodies in NSW be examined by Government.*
2. *That a full review be conducted of stewards' powers, the degree to which they are open to abuse, fail to engender confidence in the process and involve stewards in real and/or perceived conflicts of interest.*
3. *That the proper conduct of hearings, together with the requirements for record keeping and the recording of reasons for decisions, should be reviewed.*
4. *That the role and duties of the Chief Steward, and the desirability of there being such an office, as distinct from a specific steward management position, should be examined.*
5. *That the GRA ensures that there are appropriate accountability measures in place by means of which the exercise of discretionary powers is properly scrutinised.*
6. *That the GRA arranges for the conduct of a full training needs analysis and subsequently develops a comprehensive strategy to ensure that its stewards meet the required standards.*
7. *That, following the identification of the core competencies of the steward function, the GRA review its policy on recruiting individuals with an existing connection with the greyhound racing industry.*
8. *That the changes outlined in the 1996 GRA fraud risk assessment report be implemented.*
9. *That in addition to Recommendation 8, arrangements also be examined for the adequacy of their resistance to corruption, including those for: security of information, cash, a variety of forms, papers being processed at the counter, documents and the security of all records whether in hard copy or electronic form.*

10. *That the GRA seek the assistance of the Department of Gaming and Racing in obtaining the appropriate policy skills necessary to properly address the issues surrounding the circumvention of suspension and disqualification sanctions.*
11. *That the GRA review its policies and procedures to ensure that overlap between the regulatory and promotional aspects of its operations are minimised to as great an extent as possible, that relationships between staff and industry participants are appropriate, and that conflicts of interests are properly identified and managed when they arise.*
12. *That the Government and the three racing codes examine the possibility of combining some or all aspects of the drug testing functions.*
13. *That the GRA conduct a thorough market test to ensure that the most appropriate organisation available is engaged to conduct its laboratory testing and that the conditions are the most advantageous for the greyhound racing industry and for the community.*
14. *That, following the identification of suitable providers of forensic testing services, the GRA enter into a formal contractual arrangement which clearly identifies the roles and responsibilities of the parties.*
15. *That, no matter from which source the GRA obtains its forensic testing services, major issues need to be addressed, and monitored properly, including: swabbing procedures, selection of dogs to be swabbed, custody of samples, continuity of evidence, transport of samples, receipt and security at the testing location, procedures at the testing location, and recording and reporting of tests and results.*
16. *That the GRA critically assesses its contract development and administration practices to ensure that it obtains the best value for money and maintains appropriate professional and probity standards at all times.*

After the ICAC reported in 2000 the then Minister for Gaming and Racing wrote to the Chairman of the *Greyhound Racing Authority (GRA)* to advise him that the Government fully supports the recommendations of the ICAC report and that Departmental officers would be taking an active role in assisting the GRA with the implementation of those recommendations; and seeking his urgent advice on the GRA's plans and timetable for the implementation of the ICAC recommendations.

The Minister also wrote to the Chair of the *Thoroughbred Racing Board* and the Chair of *Harness Racing NSW* to seek their urgent advice on the implications of the ICAC report on the wider racing industry, and on the implications of recommendations 1 and 12 which recommend the examination of combining certain regulatory and drug testing functions across the three codes of racing.

In relation to recommendations 1 and 12 of the ICAC's *Greyhound Report* (ie examine the combination across the three codes of certain regulatory and drug testing functions) the Minister engaged retired Judge Barrie Thorley to conduct an independent review of those matters.

Judge Thorley was provided with the following terms of reference:

*To examine the feasibility, practicality and cost effectiveness of combining the regulatory roles of the three controlling authorities of racing (NSW TRB, HRNSW and NSWGRA).*

*Without limiting the generality thereof, the examination should include the authorities' stewarding functions, their wider regulatory roles, including their drug testing functions and amongst other things it should address possible improved levels of probity, economies of scale and consistency of regulation and penalties.*

*The Boards of the three controlling authorities, officers of the Department of Gaming and Racing and other persons deemed relevant are to be consulted during the examination.*

In summary, Judge Thorley made four recommendations:

1. *That the existing structures of stewards be retained.*
2. *That each of the codes take steps designed to achieve greater interrelationship between the three sets of stewards including the provision of joint educational exercises.*
3. *That the legislation of each code be amended to enable its authority to appeal against the dismissal of a charge or the inadequacy of penalty imposed by its stewards to its appeals tribunal and, in the case of the Thoroughbred Racing Board, to and from its appeal panel.*
4. *That each of the codes take steps to set up a consultative committee to the Australian Racing Forensic Laboratory in order to fulfil the purposes described therein.*

Recommendation 1 of the Thorley Report is supported by findings that:

- (i) The three codes of racing did not support a tri-code approach to stewarding because it does not have an overall benefit;
- (ii) While there was potential for the multi-skilling of stewards across codes, the complexity of implementing such an approach is underestimated;
- (iii) The cost of an additional body to oversight a tri-code approach would be an additional cost to the racing industry;
- (iv) The primary purpose of the controlling bodies to control and regulate the industry would likely be diminished by possible impediments to communication, and also that the industry objectives of the original bodies may not be recognised by the new body; and
- (v) That the different basis of employment of stewards by the Thoroughbred Racing Board – which is not subject to public sector requirements – and the other controlling bodies – which are public sector employees – would result in complexities and additional costs.

Finally, both ICAC investigations underline the importance attached to the racing integrity function undertaken by stewards and the relevant controlling bodies of racing.

Maintaining public confidence in the conduct of racing and associated wagering is of paramount importance to the public interest to ensure that consumers of betting services are not disadvantaged by corrupt conduct, and also for the purpose of ensuring that the public and racing industry participants will continue to patronise racing and therefore support its viability.



The tension between the 'integrity' and 'viability' objectives is recognised in the *NSW Audit Office Report: Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority* (March 2008):

*The greyhound and harness racing industries are facing pressures to remain competitive. Participation levels in general are declining – both in terms of licensed owners and trainers, and punters attending meetings and placing bets. And, the significant contributions to the industries based on TAB betting turnover have not increased relative to cost of living increases. The industries are focussed on maximising the use of funds to make their racing codes as attractive as possible (such as increasing prize monies and improving racing infrastructure), while maintaining confidence in the viability of racing.*

Concurrently with this Review, the Honourable Judge Gordon Lewis AM is conducting a review of the *Integrity Assurance in Victoria's Racing Industry*.

The terms of reference for that review are:

- i. determining whether integrity services and systems should remain a function alongside the commercial and developmental roles of the Controlling Bodies or be separately provided independent of those roles*
- ii. to ascertain if a case can be made for separation of function, whether the services and systems should be delivered individually for each code or across all three codes*
- iii. ensuring integrity issues are pursued to the appropriate levels of governance regardless of the seniority or influence of any individuals concerned*
- iv. developing an integrity assurance structure and culture that is fully transparent, accountable and incapable of undue influence by external interests*
- v. any other aspects of the provision of integrity services and systems that is deemed to be appropriate.*

### **Consultation Process**

The public and interested parties were invited to make submissions by 28 March 2008 by notices published as follows:

- Sydney Morning Herald (15 and 22 February 2008)
- Daily Telegraph (15 February 2008)
- Trotguide (14 February 2008)
- Greyhound Recorder (14 February 2008)
- The Chaser (March 2008)
- Racing NSW Calendar (March 2008)
- The websites of:
  - the Office of Liquor, Gaming and Racing
  - the Greyhound and Harness Racing Regulatory Authority
  - Greyhound Racing NSW
  - Harness Racing NSW

A copy of the advertisement inviting submissions is attached as Annexure A.

Twenty seven submissions were received by the Review.

The Review attended a number of race meetings to gain an appreciation of the operational aspects of conducting a race meeting.

While particular focus was afforded to observing the activities of race day stewards, there was also the opportunity to meet with other race day officials including, for example, the starter, the judge, the mobile barrier driver, and the lure operator. Race day veterinary procedures were also observed.

The Review's considerable gratitude is expressed to all officials that gave freely of their time and experience to provide an insight into their sphere of responsibility.

Equally, the Review's gratitude is expressed to the office bearers of racing bodies and senior executives of race clubs that also gave their precious time on a race day to assist the Review.

This included visits to:

- Dapto Greyhound Racing Track (Dapto Agricultural and Horticultural Society Inc)
- Wentworth Park Greyhound Racing Track
- Potts Park Greyhound Racing Track (Yagoona)
- Nowra Racecourse (Shoalhaven City Turf Club Ltd)
- Kembla Grange Racecourse (Illawarra Turf Club Ltd)
- Royal Randwick Racecourse (Australian Jockey Club - AJC)
- Rosehill Gardens Racecourse (Sydney Turf Club - STC)
- Harold Park Paceway (NSW Harness Racing Club Ltd)
- Bankstown Trots (Bankstown Harness Racing Club)

The Review also met with the following persons to provide an opportunity for the exchange of views about the purposes of the Review:

- The Board of the Greyhound & Harness Racing Regulatory Authority, and its Chief Executive
- The Board of Harness Racing NSW, and its Chief Executive
- The Board of Greyhound Racing NSW, and its Chief Executive
- The Chief Executive of Racing NSW, and other senior staff
- The Chief Executive of the Australian Racing Board
- The General Manager, Integrity Services and Chairman of Stewards at Racing NSW - Mr Ray Murrphy
- The Racing Appeals Tribunal, and Greyhound & Harness Racing Appeals Tribunal (Judge Thorley & Justice Haylen)
- The Acting Chief Executive of Racing Victoria Ltd
- The Racing Appeal Panel (Principal Member Mr John Hiatt OAM)
- The Acting Director of Integrity Services, Racing Victoria Ltd
- Members of the Victorian RAD
- The Executive Director, Gaming and Racing, Victorian Department of Justice
- Honourable Judge Gordon Lewis AM (review of *Integrity Assurance in Victoria's Racing Industry*)

- The Director of Racing Services, Tasmania
- The Managing Director (Wagering), Tabcorp, and other senior staff
- The Chief Executive and Senior Executive of the AJC and the STC

The Review wishes to also express its gratitude to the abovementioned officials and to all submission makers for providing input and assistance.

### **Summary of Submissions**

Twenty seven submissions were received from a wide range of racing industry stakeholders and participants.

The majority of submission makers addressed themselves to substantive matters within the terms of reference of the review.

There were also a small number of submission makers who took the opportunity to air their grievances about specific administrative or operational aspects of the industry.

In perusing the submissions it was obvious, and might I add pleasing to note, that the majority of authors are passionate about their particular code of racing.

Following is a summary of submissions providing a brief overview for the purpose of identifying the major issues raised and addressed in the submissions.

### **Racing Appeal Process**

There was a mixed response to the issue of an appropriate Appeal structure across the three codes of racing in NSW.

Of the few submissions that touched on this issue, one indicated support for an amalgamated appeals and penalty tribunal to cover all three codes of racing. *[Submission No: 6]*.

Two submission makers suggest possible amendments relative to certain operational issues of the Greyhound & Harness Racing Appeals Tribunal. *[Submission Nos: 8, 16]*.

One submission maker proposes that a more formal and more independent process be put in place for the thoroughbred industry. This would involve disbanding the two tier appeal system and installing a system by which appeals of stewards' decisions would go direct to the Racing Appeals Tribunal. *[Submission No:18]*



Two other submission makers support the two tier system for thoroughbreds suggesting that it is appropriate, operates effectively, and should remain as is. [Submission Nos: 11, 23].

### Employment of Stewards

The question of the amalgamation of stewards' functions across the three codes of racing was directly raised by three submission makers.

In essence, the three submission makers oppose the proposal to put the integrity (or stewarding) functions for each of the three codes under the one roof. [Submission Nos: 13, 15, 17].

The arguments are that it will create a further administrative layer resulting in additional costs to the whole industry.

Also, some indicated concern that placing stewards from all three codes under one umbrella has the potential to prejudice or dilute the integrity of racing between the three codes.

Other concerns include that stewards being employed across the different codes could potentially result in a steward officiating at a race meeting from a code of racing about which that steward has limited experience or knowledge.

### Stewards' Training

Many submission makers suggest that it is vital for racing stewards in all three codes to have the availability to access the necessary education and training to be able to undertake their duties at the highest level. The underpinning position is that the integrity of the racing industry is paramount to its ongoing viability. [Submission Nos: 2, 4, 5, 6, 7, 10, 11, 16, 18, 19, 22, 27].

One submission maker put that there is existing nationally accredited formal training and associated qualifications available for stewards, from entry level cadet training right through to diploma level training for senior stewards. The same submission maker believes that it is imperative that this form of training be adopted by all codes of racing throughout Australia to help alleviate the current critical shortage of educated and appropriately trained stewards. [Submission No: 19]

### Structure of Regulatory Bodies in the Racing Industry

There were two distinct areas covered here by submission makers.

The thoroughbred racing industry in NSW has one controlling body with responsibility for 'commercial' and 'regulatory' functions.

The harness and greyhound racing industries on the other hand operate quite differently, in that each code has a separate controlling body for its commercial functions. There is one controlling body cast with the responsibility of the regulatory functions of both the harness and greyhound racing codes.

The differences have been reflected in the comments received via the submissions.

### Racing NSW

The majority of submissions makers on this subject were in favour of retaining the status quo for the control of thoroughbred racing in NSW. [Submission Nos: 11, 12, 13, 14, 15, 18, 20, 24, 25].

The general view is that the current system works well and that any proposal to change this could result in increased administrative costs to the racing industry, and could have the potential to diminish the integrity of each code of racing.

Some submission makers suggest that while it is important for the regulatory controlling bodies for each code to communicate and co-operate in some aspects of their operations, it is critical for the effective control of thoroughbred racing in NSW that the same body has responsibility for integrity and regulatory based functions in relation to thoroughbred racing, as well as other aspects of its welfare, control and strategic development.

### Greyhound and Harness Racing Regulatory Authority (GHRRA)

A number of submission makers addressed the issue of whether it is appropriate to have separate regulatory and commercial bodies for harness and greyhound racing.

The majority supported a single board for each code of racing. The general view is that the separation of the functions into two distinct areas controlled by different Boards (ie the dual board approach) has failed. The forecast amalgamation savings expected to be achieved following the formation of one controlling body for harness and greyhound regulatory functions (GHRRA) have not eventuated. [Submission Nos: 7, 10, 26, 27].

One submission maker suggests that the regulatory control functions for the greyhound racing industry should be transferred to the industry's controlling body for commercial matters (GRNSW) and that that Board should operate independent of Government. [Submission No: 22].

Two submission makers believe the separate Board model for commercial and regulatory functions for both the harness and greyhound racing codes should stay. [Submission Nos: 16, 21].

### Other Matters

A number of other matters were raised by certain submission makers.

Some submission makers suggest that more importance should be placed on increasing the number of drug tests carried out. Others have suggested that more focus should be placed on targeting likely offenders or repeat offenders in testing. Another has suggested that a more sensible approach to the effect of a drug on a greyhound's performance needs to be taken by the controlling body to draw a distinction between those situations where a drug has been administered and those where a minor trace may have entered a greyhound's system unknowingly or accidentally and with a performance enhancing effect. [Submission Nos: 2, 6, 8].

A concern of some submission makers is that the NSW controlling bodies and NSW participants should have more input and control over the making of the Rules and policies under which they operate. The submission makers suggest that *Greyhounds Australasia* currently has too much control and an assessment of its functions is needed. [Submission Nos: 4, 6, 10].

Other submission makers suggest that across the three codes there is need for clarification and simplification of some of the Rules of Racing. [Submission Nos: 8, 10, 11].

One submission maker proposes that there should be a change to the composition of the controlling body for the commercial side of the greyhound racing industry (GRNSW) so that its Board should consist of independent members and not industry representatives. [Submission No: 10].

Two submission makers expressed concern that licensed racing participants are bound by rules and policies, yet unlicensed persons are able to commit offences that may impact on the racing industry or its participants without any recourse from racecourse authorities. They suggest a possible remedy which is to provide more power to officials over unlicensed persons who commit 'racing' offences. [Submission Nos: 24, 25].

## **CHAPTER 2**

### **Summary of Recommendations**

After full consideration of all information provided to me in writing and verbally, I make the following thirteen recommendations.

1. The **Review recommends** that a new racing disciplinary and appeal structure be put in place. (pages 15-18)
2. The **Review recommends** that the Racing NSW Appeal Panel be disbanded. (page 18)
3. The **Review recommends** that the functions and operations of the Racing Appeal Tribunal be expanded to better deal with complaints and investigations with regard to the behaviour of unlicensed persons, where that behaviour impacts upon the racing industry. (page 17)
4. The **Review recommends** that a new system and structure be put in place for the employment of stewards across all three codes of the racing industry. (page 20)

That all stewards be employed by a single company, "*Stewards New South Wales Pty Ltd*".

The employing company will be responsible for the provision of stewards to race meetings across the three codes.

That a new position of "*Probity Auditor*" be created to oversee the identification of probity and integrity issues arising from the operations of the company.

5. The **Review recommends** that stewards be required to have obtained benchmark educational qualifications, those benchmarks varying depending upon the level of authority exercised by stewards. (page 22)
6. The **Review recommends** that stewards be accredited by the Regulator of each of the three codes. Such accreditation being annually reviewed. (page 22)
7. The **Review recommends** that no change be made in the current structure of Racing New South Wales. (page 24)

8. The **Review recommends** that the GHRRA be disbanded and some of its functions be put under the control of the boards of GRNSW and HRNSW. (page 24)
9. The **Review recommends** that the class of persons who are banned from engaging in betting activities under the rules of racing relevant to each code be expanded to cover senior racing officials being persons who are engaged in the development and regulation of integrity issues within the racing industry. (page 25)
10. The **Review recommends** that a system of small claims arbitration be established for the racing industry to cover debts created by the failure of owners paying trainers and trainers paying race clubs whose premises are used by the trainers for the training of animals. (page 27)
11. The **Review recommends** that a regime of swabbing be instituted at the point of sale of thoroughbred horses. (page 28)
12. The **Review recommends** that a standard clause be inserted into contracts for sale of thoroughbred horses making such sales dependent upon negative swabbing results. (page 28)
13. The **Review recommends** that:
  - (i) legislation consistent with the Sporting Venues (Pitch Invasions) Act 2003 is enacted to prohibit unauthorised persons coming onto racecourses;
  - (ii) a listing of relevant racecourses be contained in a schedule to the Act and that it be a condition of registration of racecourses that its name appears in the schedule; and
  - (iii) due to the extreme level of danger and the potentiality of fatal injury, the appropriate maximum penalty for breaching the prohibition of unauthorised persons coming onto racecourses be 100 penalty units and/or a period of imprisonment. (page 29)

### **CHAPTER 3**

#### **Proposed Racing Disciplinary and Appeals Structure**

I have now had the opportunity of observing, on a number of occasions, the activities of stewards involved in all three racing codes. There is considerable similarity between the operations of stewards in all three codes as to the procedures and principles adopted by stewards in seeking to enforce the relevant rules of racing.

It has been my overwhelming impression that the stewards I have observed have acted with professionalism and integrity doing the best they can to ensure that the relevant rules of racing are observed by participants in the industry.

The submissions that I have received that deal with the role and responsibilities of stewards and the practices and procedures of stewards have a common theme of "*if it is not broken don't fix it*". Those submissions point to a lack of complaint as to the present procedures and practices and take that as the measure of the system's effectiveness.

To my mind a relevant test as to whether the current practices and procedures are likely to remain effective into the future is whether or not the practices and procedures are vulnerable to criticism and invalidation following intervention by relevant judicial authorities.

There is a real possibility that proceedings brought by a disgruntled industry participant against a decision of the stewards would succeed.

The traditional role of stewards is that of acting as investigator, prosecutor and adjudicator. There is no discernable break or differentiation between stewards engaging in all three functions. Leaving aside matters of law and issues of natural justice, there is a lingering perception that it is inappropriate for the same person to gather evidence, bring a charge based upon that evidence, prosecute that evidence and determine the charge based upon that prosecution.

Other jurisdictions in the Australasian Racing Industry have recognised the problematic nature of the traditional stewards role and have changed the method of regulation. New Zealand has acted to completely divorce stewards from the role of adjudicator. The role of determining whether a charge has been made out, together with the role of determining the appropriate sentence falls to a person who is independent of the stewards.

The Victorian thoroughbred racing sector has removed the role of stewards as adjudicator for some matters, deemed to be matters of what could be described as a most serious nature. The stewards still complete the role (as they do in New Zealand) of gathering evidence and presenting that evidence to the decision maker. The dividing line between those matters which are



dealt with by stewards in their entirety and those matters deemed to be more serious and not to be determined by stewards was arrived at (as I understand it) simply by a process of nomination, without consultation.

I note that the Brown Review received a number of submissions raising as an issue the traditional stewards method of operation and calling for change. I further note that the issue of the perception of the traditional steward's mode of operation is referred to in the submission of Racing New South Wales albeit that Racing New South Wales concludes that the beneficial nature of the existing system is such as to outweigh any problems associated with an adverse perception.

Having regard to all of the above matters I make the following recommendations:

- (a) that the role of stewards be altered so as to restrict stewards to determining a reduced range of matters. To this end the major participants in the industry (in each of the codes) should come together to determine what are the most common race day matters currently dealt with by stewards;
- (b) those matters which are identified as the most common race day matters should be codified so as to be able to set out the relevant elements of the specific offence and those elements relevant to sentencing on a single sheet of paper. The task has been very ably carried out by Racing New South Wales with regard to the charge of careless riding in the thoroughbred industry. It will be for the major participants in each code of the industry to confer as to an acceptable codification of the relevant offences;
- (c) the role of stewards should be restricted to that of determining what are considered to be relatively minor breaches of the Rules of Racing defined either by the nature of the offence or by the penalty that is likely to result from a conviction.
  - (i) In addition to the steward's determinative role they should continue the role of investigating and obtaining evidence relevant to more serious offences. The range of those offences determined either by the nature of the offence or by the penalty likely to be imposed following conviction.
  - (ii) The more serious offences should be determined by a newly created position of Racing Adjudicator. The Adjudicator will rely upon stewards to present as prosecutors information and evidence relevant to the specific charge. The Adjudicator should be a person who is a qualified legal practitioner with a minimum of seven years experience.
  - (iii) The Racing Adjudicator should have the ability to call upon an Assessor, being a person with specialist knowledge in, for example, veterinary, betting or form analysis matters.

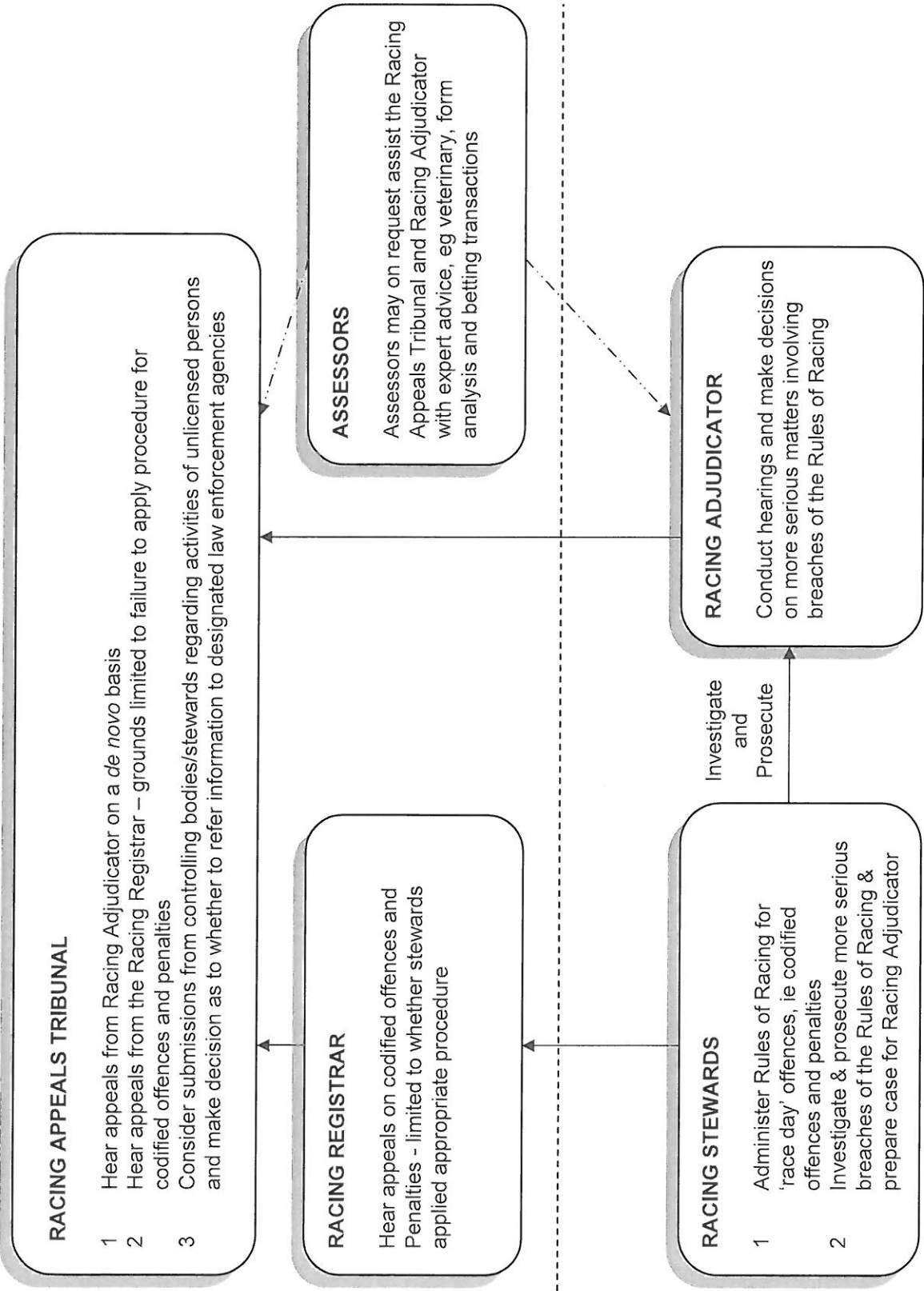
- (iv) Appeals from determinations of the stewards (being minor and codified matters) would go to a newly created Racing Registrar who will have the ability to hear appeals from stewards on a limited basis i.e. whether the stewards have or have not applied appropriate procedures in determining the matter before them. The current Racing Appeals Tribunal should hear appeals from the Racing Registrar on grounds limited to procedural failures.
- (v) The Racing Appeals Tribunal would hear on a de novo basis appeals from the Racing Adjudicator (such determinations of the Adjudicator being with or without the assistance of an Assessor).
- (vi) The Racing Appeals Tribunal should have its role extended so as to enable it to deal with allegations relating to unlicensed persons acting in a manner which is contrary to the interests of the racing industry of New South Wales, as follows:
  - (a) if stewards or other organisational industry representatives became aware of credible information which led to a prima facie view that persons, not licensed, were acting in a way which was detrimental to the racing industry in New South Wales either in conjunction with licensed persons or otherwise, then such information would be brought to the attention of the judicial member of the tribunal;
  - (b) the judicial member of the tribunal would then consider the information brought forward and determine whether or not the information was such as to create a credible apprehension and that the allegations were necessary of further investigation;
  - (c) if the judicial member formed the view that further investigation was warranted then the judicial member should have the ability to contact a dedicated senior police officer and require that police officer to carry out investigations based upon the information laid;
  - (d) if following those police investigations it became apparent that enough evidence was available to sustain (on a prima facie basis) a charge (on matters such as e.g. a breach of s.93V of the *Crimes Act* or more generally conspiracy or fraud charges) then those charges would be laid by the police in the ordinary course of their duties and a report made back to the tribunal;
  - (e) if the result of the police investigations is that credible evidence has been raised against licensed persons then that evidence should be passed on to the stewards who would act to bring charges against those licensed persons.



- (vii) The Racing Appeals Tribunal should be located centrally. To this end I recommend that discussions be held with the President of the Industrial Relations Commission of New South Wales with a view to housing the tribunal at 47 Bridge Street Sydney.
- (viii) The Racing New South Wales Appeal Panel should be disbanded.

A diagrammatic representation of the proposed structure is attached to this Chapter.

# PROPOSED RACING DISCIPLINARY AND APPEAL STRUCTURE



A P P E A L S J U R I S D I C T I O N

O R I G I N A L J U R I S D I C T I O N

## **CHAPTER 4**

### **Employment of Stewards**

As between stewards engaged in all three codes of the racing industry there is a large degree of commonality as to the basic skills required.

Relevantly for each of the codes there are discernable specific skills the development of which is primarily based on experience. Examples of some of these skills are:

- (i) the necessary ability of stewards in any code to be able to “read” a race;
- (ii) the ability and skill of being able to prepare an accurate form guide or map for specific races/meetings in each of the codes.

There is discernibly increasing pressure upon the resources of stewarding in each of the codes and indications that the resources available may in the future diminish.

It is logical that the racing industry should look to as much pooling of resources as possible.

Based on the above I make the following recommendations:

- (i) that a company be formed to be known as “*Stewards New South Wales Pty Limited*”. That company should have three shareholders, one for each code. The quantum of shares between shareholders should mirror the size of the contribution made by the code to the industry overall;
- (ii) each of the shareholders is to have the ability to nominate a representative to sit on the board of the company;
- (iii) the company’s constitution should include an obligation that the company is to provide training to stewards by contracting with an accredited training provider;
- (iv) the management of the company should fall to the person who, from time to time, is the Managing Director of Racing New South Wales;
- (v) the purpose of the company is to employ and train current and future stewards in New South Wales;
- (vi) the company will provide (upon request) stewards to run race meetings in any of the three codes;
- (vii) the constitution of the company should oblige the company to report annually to the Minister for Gaming and Racing;
- (viii) prior to the creation of the company the constitution of the company must be approved by the Minister for Gaming and Racing;

- (ix) that a position of Probity Auditor be created, being a person with appropriate legal or accounting qualifications and a minimum of seven years experience;
- (x) that the role of the Probity Auditor will be to:
  - (a) receive from the company on a six monthly basis probity and integrity reports;
  - (b) conduct, as the Auditor sees fit, spot or impromptu inspections of the operations of the company and its employees;
  - (c) receive and investigate complaints from employees of the company (including stewards) as to matters of probity and integrity relating to other employees and directors of the company.

## CHAPTER 5

### Stewards' Training

There is at present a lack of uniformity in the training and qualification of stewards both across codes and within codes.

There is no systematic requirement for continuing skill development amongst stewards.

Based on the above I make the following recommendations:

- (i) there should be a basic educational requirement of Certificate III for any steward exercising authority at a race meeting. The qualification of Certificate III may be obtained through awarding by a training provider or by a steward demonstrating an equivalent level of knowledge gained via experience;
- (ii) stewards who are to be considered to be and who hold the authority to act as senior stewards at race meetings should have as a minimum qualification Certificate IV or be assessed as holding equivalent skills obtained from experience;
- (iii) all stewards who are required to conduct race meetings should be required to undergo (in addition to certificate level study) a minimum of three hours annually continuing education development. For the more senior stewards this may entail the delivery of lectures and papers on specific relevant topics;
- (iv) all training, across the codes should be delivered by the one training provider. That industry training provider should ensure that its services include the provision of distance education via electronic communication;
- (v) no race meeting, in any code, the conduct of which allows for members of the public to lay wagers, may be conducted by a steward, be that steward a volunteer, employee or contractor, unless that steward has been accredited as having at least the minimum qualification of Certificate III or its experience equivalent;
- (vi) a list shall be held by the proposed *Stewards New South Wales Pty Limited* of each of the codes of all stewards able to conduct race meetings at which members of the public are able to lay wagers;
- (vii) the accreditation of stewards is to be annually renewed;
- (viii) with regard to provincial and country stewards who are not in the employ of *Stewards New South Wales Pty Limited* for the code and who do not appear on the roster of *Stewards New South Wales Pty Limited*, the accreditation should include a

requirement that those stewards spend time on the roster of *Stewards New South Wales Pty Limited*;

- (ix) each of the codes should have designated a person to act as Accreditation Registrar whose tasks include:
  - (a) the assessment of accreditation applications;
  - (b) the removal of persons from the accredited list if they fail to meet the requirements of renewal;
  
- (x) stewards who are not employed by *Stewards New South Wales Pty Limited* and who act as a contractor overseeing particular race meetings should not have the authority to enquire into irregularities that occur during the race meetings they superintend but should be required to gather information and evidence with regard to any irregularities that so occur and cause a report containing such information and evidence to be presented to *Stewards New South Wales Pty Limited*.

It would be appropriate if the regulating bodies in the three codes in New South Wales were to approach and make recommendations to their respective national bodies to the effect that a representation be jointly made by the industry to the Federal Government seeking assistance in funding the vocational training necessary for the proper operation of the racing industry.

## **CHAPTER 6**

### ***The Operation & Structure of Regulatory Bodies in the Racing Industry***

#### ***Racing New South Wales***

Nothing that I have observed or read supports any recommendation to change the current combination of both commercial and regulatory responsibilities within the single organisation, Racing New South Wales. On the contrary a number of parties have both orally and in writing pressed for the retention of the single organisation.

The adoption of the recommendations I have made with regard to the employment and training of stewards in the industry will mean that there is a change and reduction in the regulatory functions that Racing New South Wales will need to perform. Such a reduction in regulatory functions by itself supports the concept of retaining a single body dealing with both regulatory and commercial matters.

#### ***Greyhound and Harness Racing Regulatory Authority (GHRRA)***

A number of organisations and persons both orally and in writing have strongly supported the disbanding of the GHRRA with a view to vesting the commercial bodies (Greyhound Racing New South Wales and Harness Racing New South Wales) with regulatory responsibilities.

I have observed that the relationship between existing commercial bodies and the GHRRA is one of disengagement and antagonism. Doing the best I can to disregard current personalities and those parts of the audit reports which can be seen as dealing with establishment and teething issues, it is apparent that the commercial organisations and the GHRRA are driving towards different targets and objectives. Without a common, unifying person or structure the organisations appear to act tangentially, each believing that it is acting in the best interests of the industry, but however acting antagonistically to each others views as to the respective organisations value to the industry.

The adoption of the recommendations I have made with regard to the employment and training of stewards in the industry means that a large amount of the regulatory functions carried out by the GHRRA will no longer be carried out by that body.

Remaining functions of licensing and registration are important. It would appear both sensible and efficient to have those functions dealt with by dedicated persons fulfilling the role of Registrar, which persons should be required to report to the respective boards of the commercial bodies. There should be a minimum qualification requirement for the Registrar being that of a qualified legal practitioner. The Registrar would also advise the boards of

the commercial bodies as to appropriate changes to be made to the relevant rules of racing.

#### Senior Racing Officials

Recent events in Victoria have demonstrated that betting activities being undertaken by those that are charged with the regulation of the racing industry can lead to a decline in the perception of the integrity of the industry regulator.

I therefore recommend as follows:

- (i) that the rules of racing relevant to New South Wales, in each of the three codes, be amended to include a definition of “*senior racing official*” being persons who are engaged in the development and regulation of integrity issues within the racing industry;
- (ii) that the rules provide that senior racing officials as defined are not to engage in betting activities, for their own benefit or for the benefit of others, in Australia.

#### Integrity Manager

A recommendation of the ICAC inquiry into the activities of then Chief Steward Potter in the greyhound racing sector of the industry resulted in a recommendation being recommendation (4) as follows:

*“That the role and duties of the Chief Steward, and the desirability of their being such an office, as distinct from a specific steward management position, should be examined.”*

That recommendation (together with all other arising from that report) was given effect to and resulted in a move away from the Chief Steward in greyhound racing being able to allocate particular stewards for particular meetings to one of an integrity manager divorced from an operational role.

The submission of Greyhound Racing New South Wales points to a reversion by the GHRRA from an integrity manager approach to the more traditional Chief Steward role. There is nothing in any submission to suggest what analysis was undertaken by the organisation prior to the reversion. Absent such information it is my recommendation that the position of integrity manager be restored until such time as there is evidence of a compelling nature supporting the re-introduction of the Chief Steward role.

#### Drug Testing in the Greyhound Sector

The GHRRA has via a late submission raised the issue of the testing of greyhounds for prohibited substances. The concern (which has been raised



by others) is to the effect that with the competent laboratory testing available minute traces of chemicals can be identified as relating to a particular dog. The presence of such chemicals relevant to a dog is enough to base a charge against the persons responsible for the dog. This, it is argued, is in circumstances where the amount of the chemical present in the animal is so low as to have no discernable effect upon the behaviour of the animal. This raises the question of the development of threshold levels of chemicals needing to be obtained before a charge is laid against the persons responsible for the animal.

What is required is a scientific review and analysis. It is not logical that this would be done in New South Wales as a one off matter and indeed is a matter that should be dealt with on a national basis pursuant to the Greyhound Australasia Rules.

## CHAPTER 7

### Commercial Matters

Representatives from the AJC and STC have raised as a matter of concern the difficulties arising from trainers falling into arrears in payment of fees to racing clubs for the use of their facilities where those same trainers have suffered themselves arrears in payments being made by owners to those trainers. It is suggested that the amounts of money in issue are generally small. The consequence of the above can lead to trainers facing exclusion from the facilities of a race club even though the non-payment of fees relates to perhaps one or two of the trainers stable.

The difficulty, as it has been expressed to me, is that the cost of the race club recovering from the trainer or alternatively the trainer recovering from the owner if the debts are pursued through usual legal channels are such as to outweigh the benefits that may pertain.

A mechanism that would alleviate the cost benefit of recovery actions is the institution of a small claims mechanism. Such a mechanism would operate without the involvement of legal practitioners. Traditionally such small claims mechanisms are capped as to the amount which may be dealt with. A relevant cap would appear to be in the order of \$12,000.00 to \$15,000.00.

I therefore recommend as follows:

- (a) that a system of small claims arbitration be established specific to the racing industry. That the Chief Magistrate in New South Wales is to be approached with a request to nominate a specific sitting Magistrate to act in the role of Small Claims Arbitrator for the racing industry or that a retired Magistrate be approached by representatives of the industry to undertake the role of Small Claims Arbitrator on an as needs basis;
- (b) the second matter raised relates to the sale and purchase of thoroughbred horses. It is suggested that in some rare circumstances horses have been sold (primarily at auction) ostensibly demonstrating particular physical features at the time of purchase yet some short time thereafter are found to be lacking in their performance or appearance. This situation can arise where the horse in question is presented for sale having been injected with various chemicals. Once it has become apparent that the horse is not all what it was thought to be at the time of purchase it is very difficult to prove the condition of the horse at the point of sale and/or when and how chemicals came into the blood stream of the horse;

(c) I therefore recommend as follows:

- (i) that a regime of swabbing at point of sale be instituted by the industry;
- (ii) that a standard clause be inserted into all contracts of sale of thoroughbred horses to the effect that the sale is subject to and conditional upon the swab taken at the point of sale being negative as to chemicals affecting the horses musculature, stamina, appearance and demeanour.

## **CHAPTER 8**

### **Inappropriate Behaviour at Race Tracks**

A number of persons have raised with me orally concerns with regard to actions of members of the public on race days moving in an unauthorised way on to the race track. The tremendous risks to safety of the animals in question, jockeys or drivers is obvious.

Whilst such members of the public, when captured, may suffer the consequence of stewards banning them from attending racecourses for a period of time the efficacy of such a ban is questionable. Gate keepers at race courses cannot be expected to carry out photo identification of persons coming through the turnstiles on race days.

As was noted by the High Court in *Heatley v Tasmanian Racing and Gaming Commission* (1977) by Aickin J at page 537:

*“No doubt occasions occur on racecourses...where objectionable behaviour by some members of the public or others who attend needs to be dealt with promptly, but basically that is a matter in the hands of those controlling the relevant premises.”*

The onus would appear to fall upon the racing clubs who own and/or occupy the relevant racecourses. As with other sporting venues it would appear that the most appropriate response is to have those who feel it necessary to trespass during sporting events charged with an offence and brought before a Magistrate with the prospect of facing a not inconsiderable fine. This course of conduct requires a commitment by the occupiers of the racecourses to pursue such remedies against members of the public who act so irresponsibly.

I therefore recommend as follows:

- (i) that legislation consistent with the Sporting Venues (Pitch Invasions) Act 2003 is enacted to prohibit unauthorised persons coming onto racecourses.
- (ii) That a listing of relevant racecourses be contained in a schedule to the Act and that it be a condition of registration of racecourses that its name appears in the schedule.
- (iii) That due to the extreme level of danger and the potentiality of fatal injury, the appropriate maximum penalty for breaching the prohibition of unauthorised persons coming onto racecourses be 100 penalty units and/or a period of imprisonment.



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NSW Office of Liquor, Gaming and Racing

## **REVIEW**

### **Regulatory Oversight of the NSW Racing Industry**

The Minister for Gaming and Racing has requested Mr Malcolm Scott to conduct an independent review of the regulatory oversight of the NSW racing industry.

The Review is to examine whether there are adequate powers and procedures in place for the effective and efficient regulatory oversight of the three codes of racing in NSW by their respective industry controlling bodies.

The Review will:

1. Investigate the effectiveness of current legislation, the Rules of Racing and administrative procedure underpinning the integrity regulation of the three codes;
2. Identify potential improvements in regulation including by amendment of legislation, the Rules of Racing, related administrative procedure and the role of stewards;
3. Examine current education, training requirements and professional standards for stewards and any potential improvements;
4. Examine existing career paths available to stewards, and opportunities for employment in the racing industry;

The Review will consult with all key stakeholders including the NSW controlling bodies for racing and the national peak bodies for the three codes of racing.

As part of the review process, submissions are also sought from the public to assist the Review with the above four terms of reference.

Submissions should be marked "Racing Regulatory Oversight Review" and forwarded to:

Mr Greg Semmler  
Office of Liquor Gaming and Racing  
GPO Box 7060  
Sydney NSW 2001

Or electronically to [greg.semmler@olgr.nsw.gov.au](mailto:greg.semmler@olgr.nsw.gov.au).

**Please note that the closing date for submissions is Friday 28 March 2008**

**2008 Independent Review of Regulatory Oversight of NSW Racing Industry*****List of Submissions***

<b>#</b>	<b>Submission Author</b>
1	Mr Joseph Golden
2	Mr Bruce Teague
3	Mr Peter Mair
4	Mr Paul Wheeler
5	Mr Ian Burkinshaw
6	Mr John Tracey
7	Registered Greyhound Participants' Association
8	Absalom Family
9	Mr Michael Murphy
10	Dr Tom Astbury
11	Racing NSW
12	Provincial Association of NSW
13	Mr John Messara, Chairperson, Aushorse Ltd
14	Mr Peter Horwitz, Chairperson, Thoroughbred Racehorse Owners' Association
15	Racing NSW Country Ltd
16	Greyhound & Harness Racing Regulatory Authority
17	NSW Greyhound Racing Clubs' Association
18	NSW Jockeys' Association
19	Mr John Baker
20	Australian Trainers' Association (NSW Branch)
21	Mr Tim Orlizki
22	Greyhound Racing NSW
23	Mr John Hiatt
24	Australian Racing Board
25	Tabcorp
26	Harness Racing NSW
27	NSW Harness Racing Club Ltd