

# **RACING'S REGULATORY FRAMEWORK IN AUSTRALIA AND THE INTEGRATION OF TECHNOLOGY – THE CONTROL ROOM**

## **Introduction**

The traditional Stewarding model has served the industry in Australia well over many decades. However, Australian racing is now a seven day a week business and its footprint is spreading across daytime, twilight and evening timeslots. This means that there is an increasing demand on Stewards to ensure that they can swiftly identify any potential risks to the integrity of racing and can deal with these issues quickly and effectively when they arise.

Stewards are the cornerstone of integrity and their main role is to administer the Rules of Racing. One critical aspect of that role is to examine the rides of jockeys to assess whether their mounts were given every opportunity to obtain the best possible placing or win. Obtaining as much relevant information is critical in assisting Stewards with this task and this includes considering the significant amount of wagering data from corporate bookmakers and betting exchanges. Stewards need this information quickly so they can make a timely and informed judgment as to whether a ride or other matter relevant to the Rules of Racing requires closer examination.

The traditional Stewards' room, located on the race track, is a hub of activity on race day and Stewards attend to all manner of different issues concerning the running of a race meeting. However, rapid advances in technology are changing the way race-day Stewarding may be considered, and the ways in which Stewards can get the information they require quickly and in a practical form. To this end, Racing Victoria has recently built a Raceday Control Room at its head office. This Control Room is staffed by betting analysts, form analysts, and stewards who have access via the latest technology to live betting patterns and related data, and Stewards' patrol and commercial race vision. The Control Room communicates with the race-day Stewards to relay relevant information in real time to assist the Stewards with their crucial integrity function. The Control Room is transforming the quality and flow of information to race-day Stewards by using the latest technology. Of particular relevance to this paper, this enhanced capability is assisting in detecting suspicious betting activity which may lead to greater scrutiny of the rides of jockeys.

This paper will examine:

- a. the special position of the Stewards in Australian law;
- b. the evolving disciplinary system in Victoria; and
- c. the use of technology to assist Stewards in administering the Rules of Racing.

## Traditional role of the Stewards

The special position the Stewards hold in Australia from a legal perspective has from time-to-time received criticism, especially as the role of Stewards as both accuser and judge offends the legal maxim that no person may be judge in his or her own cause. However, the law recognises that the decisions of the Stewards as valid even though the Stewards are detectives, accusers, prosecutors and judges.<sup>1</sup> This unique position the Stewards hold was also affirmed in the New South Wales Court of Appeal and the Privy Council decisions in the matter of *Calvin v Carr*<sup>2</sup>, in which it was decided that, in cases where the Stewards are acting under a set of rules adopted by a code of racing, this process will be accepted.

In *R v Brewer; ex parte Renzella*<sup>3</sup>, Adam J held that given the licensed person had agreed to be bound by the Rules of Racing, “*he cannot avail himself of the principles of natural justice in so far as the normal requirements of natural justice have been modified or abrogated by the rules.*”<sup>4</sup> In relation to the Rules of Racing and how they affect Stewards’ inquiries and their apparent disregard of the principles of natural justice, Adam J further commented:

“...it is evident that the relevant rules of racing of the VRC relating to stewards’ inquiries are in a common and universally accepted form. Furthermore, that the form taken by such inquiries appears readily enough justified as a matter of practical necessity as being conducive to the interests of well-organised racing if, as usually must be the case, the inquiry should be held expeditiously, and the stewards, of whom three at least must act, are in a position to take prompt action based on their personal observation of what happens at the race meeting which it is their responsibility to control. ...”<sup>5</sup>

In 2001, the Supreme Court of Victoria was asked to rule on the unique position of the Stewards, when thoroughbred trainer Mark Riley sought to review a decision of the Racing Appeals Tribunal. Balmford J, described the prevailing view on the unique position of the Stewards in racing:

“...a person who voluntarily submits to the Rules of Racing must accept that transgressions alleged against him will be dealt with in accordance with the long standing practice of stewards, which is authorised by the Rules. Racing is a sport in which sharp practice is not unknown. The stewards have the unenviable duty of endeavouring to ensure that the

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<sup>1</sup> *Myers v Casey* (1913) 17 CLR 90, at 138 per Powers J.

<sup>2</sup> [1977] NSWLR 203.

<sup>3</sup> {1973} VR 375.

<sup>4</sup> above n 3, 380.

<sup>5</sup> above n 3, 383-384.

sport is conducted fairly. Prompt action will often be required. Enquiries will have to be undertaken in circumstances of urgency. In such cases adherence to legal niceties is likely to prove an impediment to the attainment of justice. If, in a particular case, an injustice stems from the special nature of the enquiry, a right to a full re-hearing before an independent tribunal is provided by law.”<sup>6</sup>

Although there is still some disquiet about the position held by Stewards which offends the legal maxim that no one can sit and judge in their own cause, it is clearly apparent that there is recent legal authority supporting this position. The Hon. Justice Michael McHugh, formerly of the High Court of Australia, agreed that Stewards hold a unique position in racing when he stated:

“Perhaps fortunately for the privileged position that Stewards now enjoy concerning the rule of natural justice that no one can be a judge in his or her own cause, the early racing cases concerned owners who entered their horses under the Rules of Racing. Those rules were regarded as the binding contract between the owners and the clubs, and it seems to have been accepted that on entering into a contract with a racing club, the owners consented to the Stewards determining disputes in accordance with the Rules of Racing.

However, McHugh cautioned on the unique position of Stewards when he expressed the following opinion as to what the contemporary response of the courts might be if they were considering decisions made by Stewards under the traditional model for the first time:

“If the validity of Stewards’ decisions concerning disciplinary charges were before the courts of this country for the first time today, I think there is little doubt that the courts would unhesitatingly hold that decisions of Stewards were invalid because they infringe the fundamental common law rule that person who charges another person with an offence or breach of rule cannot sit in judgment on that charge.”<sup>7</sup>

It is important to note that the current disciplinary systems also provide opportunity for appeals by way of re-hearing thus providing a layer of protection to a perceived disregard for some of the rules of natural justice.

### **Evolving disciplinary process**

In some racing jurisdictions, such as Victoria, independent disciplinary boards have been established, generally comprised of ex-judges, lawyers and others. These boards usually hear and determine matters of a serious nature in the first instance, replacing the Stewards’ ‘judging’ function. The Racing Appeals and Disciplinary Board (**RADB**) was set up in 2004

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<sup>6</sup> *Riley v Racing Appeals Tribunal & Ors* unreported, Supreme Court of Victoria, 1 August 2001, 12.

<sup>7</sup> Racing New South Wales Stewards conference paper, The Hon. Justice Michael McHugh, 15 November 2005, 3.

by Racing Victoria to take over more serious and complex matters and quell perceived natural justice weaknesses in the traditional system alleviating the requirement for the Stewards then to act as a judge in the same matter. In matters before the RADB, the Stewards act as prosecutors, and usually prepare a formal brief of evidence, and present their case to the board as in other professional disciplinary tribunals or courts.

The RADB jurisdiction is created in Victoria under a Local Rule of Racing and states:

**LR 6C Charges for hearing and determination under LR 6A(2)(d)**

(1) **RAD Board's original jurisdiction:** Notwithstanding anything else to the contrary in These Rules, the Committee of any Racing Club or the Stewards or the Directors in exercising any power conferred on the Stewards must not hear or determine any matter or penalise any person relating to a Serious Offence.

A serious offence is then defined in the Rules of Racing and gives a guide to Stewards as to what matters the RADB has original jurisdiction.

In a report on the Integrity Assurance in the Victorian Racing Industry 2008, conducted by Judge Gordon Lewis, he reviewed the operation of the Racing Victoria RADB and found the "RAD Board has been universally praised during this consultation process."<sup>8</sup> Judge Lewis further commented on the effectiveness of the RADB stating that it:

- provides a means of speedy disposal of appeals or matters that it hears as part of its original jurisdiction. The average time between lodging of an appeal and the hearing is three days.
- has effectively reduced the hearings conducted by RAT (see below) to a trickle.
- has effectively done away with stays, sometimes lengthy, previously granted to appellants in thoroughbred racing, while an appropriate date for hearing was being agreed upon.<sup>9</sup>

Prior to the creation of the RADB, the main appeal body was the RAT which was established in 1984 by the *Racing Act* 1958 as a forum to have decisions of the Stewards re-heard. However, after the review was completed by Judge Lewis into the Integrity Assurance in the Victorian Racing Industry, he recommended that the RAT should be replaced by the Victorian Civil and Administrative Tribunal (**VCAT**), which was an existing tribunal which had previously amalgamated a number of boards and tribunals into a single tribunal service.<sup>10</sup>

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<sup>8</sup> Integrity Assurance in the Victorian Racing Industry Report, Judge Gordon Lewis, 1 August 2008, 38.

<sup>9</sup> above n 8, 38.

<sup>10</sup> above n 8, 40.

VCAT has now replaced RAT as the appellate body for all appeals from the racing codes within Victoria.

### **Evolving technology – The Control Room**

The Control Room is a secure and dedicated operational room located at Racing Victoria that houses certain integrity services roles which are able to carry out their raceday functions remotely. The room provides a centralised location for specialised integrity staff to integrate with the on-course integrity service staff, in particular the Stewards, providing them with update information and race analysis.

In early 2013 the Racing Victoria Integrity Services Department conducted a review of integrity-related raceday roles to determine which of those roles may be carried out remotely.

The following roles which can be performed within the Control Room include:

- (a) **Room/Video Steward** - analyses vision of live races, and reviews the race vision immediately following the completion of the race to determine (in addition to the Stewards who watch the race live from towers) whether riders have committed any breach of the Rules of Racing. The Video Steward then provides a summary of his or her analysis to the officiating Stewards who decide whether or not to take any disciplinary action.
- (b) **Integrity Betting Analyst** – analyses current betting trends in real time and provides Stewards with information about betting market anomalies across a number of betting platforms and horses that shift considerably in the market, which assist Stewards in their targeted selection for drug testing.
- (c) **Form Analyst** – provides expert form analysis from a punter’s perspective and then designs speed maps so the Stewards have an overall picture where each runner will run in the race.
- (d) **Raceday Analyst** – analyses races in real time and compares the form history of the horse, the betting market and observes the riding styles and actions of the jockeys during the course of the race.

The Control Room provides the Stewards with a second expert panel away from the racecourse which is dedicated to reviewing the rides of jockeys and provide immediate information or intelligence to the Stewards at the racecourse so an inquiry, if needed, can be triggered in a timely manner. The Control Room also provides the Stewards with a second set of eyes through the strategic analysis of form, rides and betting to enable a more complete investigative approach to initiate an inquiry for instance when a ride requires further examination and questioning. By concentrating expert personnel in one room, with a vast array of technology and data available, a filtered and effective flow of information to

race-day Stewards is enabled. This assists the Stewards to make better informed and more effective decisions on race-day.

## **Conclusion**

In summary then, Stewards have a traditional and unique legal position in respect of disciplinary matters arising from the Rules of Racing. This position, and the unique nature of Stewards inquiries, has been supported by case law over time. In recent times, disciplinary tribunals have arguably become more sophisticated and in tune with natural justice concerns, such that, at least for serious matters, a tribunal or board independent of the Stewards acts as judge. Furthermore, with the advances in technology and access to real time information, Stewards have more information than ever before. That information provides Stewards with the ability to scrutinise rides in a more-timely manner and this information may trigger broader investigations into other rule breaches.