

ombudsman VICTORIAN

**Own motion investigation into
Greyhound Racing Victoria**

June 2012

**Ordered to be printed
Victorian government printer
Session 2010 - 12
P.P. No. 151**

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report of an investigation into Greyhound Racing Victoria.



G E Brouwer

OMBUDSMAN

19 June 2012

Contents	Page
Executive summary	4
1. Background	8
My investigation	8
Investigation scope and methodology	8
Greyhound Racing Victoria	9
2. Integrity issues	11
Racing Integrity Commissioner’s investigation of GRV staff betting	11
Outcomes from the Commissioner’s investigations into GRV staff	12
Payments made to terminated staff	13
Betting by CEO Mr Stephens	15
Performance bonus and progression payments made to GRV senior managers	16
Ownership of greyhounds by GRV staff	17
Conclusions	19
Recommendations	20
3. Tender processes and practices	22
Compliance with tendering policies and practices	22
GRV’s tendering processes	25
Selective tendering	27
Record-keeping	29
Grant funding provided to GRV by the Office of Racing and Gaming	30
Conclusions	32
Recommendations	34
4. Other issues	36
Conflicts of interest	36
Use of GRV consultant for private works	37
The dismissal of CEO Mr Stephens’ son-in-law	38
The matter involving CEO Mr Stephens’ daughter	39
Conclusions	40
Recommendations	40
Gifts and hospitality	41
Inadequate policy	42
Acceptance by GRV staff	42
Conclusions	44
Recommendations	44

Hospitality expenses	45
Conclusion	45
Recommendation	45
Staff use of the email system	46
Actions taken by GRV's Board to improve corporate governance	47
Conclusion	48
Recommendations	48
Summary of recommendations	49
Appendix 1 - Comparison of legislative responsibilities and GRV procedures for tendering	52
Appendix 2 - CEO's email re his son-in-law	54
Appendix 3 - CEO's email to Tabcorp managers	55

Executive summary

Own motion investigation

1. In November 2011 I received information from several sources expressing the following concerns about Greyhound Racing Victoria's (GRV) operations:
 - major contracts for redevelopment and construction works at greyhound racing tracks across the state are awarded to the same small cluster of contractors without public tender.
 - there was a culture at GRV of staff betting on greyhound racing within Victoria, the industry that they were also charged with overseeing.
2. As a result I decided to commence an own motion investigation into GRV's tendering and contracting arrangements and other matters under section 14 of the *Ombudsman Act 1973*.

There was a culture at GRV of staff betting on greyhound racing within Victoria, the industry that they were also charged with overseeing.

3. In early 2011 the Racing Integrity Commissioner commenced an own motion investigation into the betting activities of GRV employees. While the Commissioner's report is yet to be finalised, several matters he examined are included within this report as they are relevant to my investigation.
4. GRV is a public body established under the *Racing Act 1958*. Its functions include to:
 - register greyhounds for greyhound racing, stud or other purposes
 - control and promote the sport of greyhound racing
 - conduct greyhound races.
5. Over the last decade, greyhound racing has become the fastest growing of the three racing codes in Victoria. Its market share was 19.7 per cent in 2011, the second largest share of the codes behind thoroughbred racing (65.6 per cent). Victoria has 13 greyhound racing clubs: two in the metropolitan area and the remainder in regional locations.
6. My investigation identified the following issues:
 - integrity issues relating to staff betting and the ownership of greyhounds
 - GRV's tendering and contracting practices were not compliant with legislative requirements
 - inappropriate behaviours and practices by GRV staff.

Integrity issues

7. My investigation identified that the standards, policies and procedures designed to ensure the integrity of greyhound racing had either not been maintained by GRV or were not sufficiently rigorous. For example:
- Prior to adoption of a new betting policy in September 2011, a culture existed at GRV of staff betting, including on greyhound races, during business hours in breach of GRV policies. Members of GRV's senior management team, including the CEO, not only ignored this behaviour but were active participants over many years.

Members of GRV's senior management team, including the CEO, not only ignored this behaviour but were active participants over many years.

Eleven staff found to have breached GRV policy were either terminated or received a first and final warning. Eight of these staff were in integrity positions such as stewards, and some were found to have bet on races that they officiated at or for which they had undertaken the grading or box draw process.

- The CEO Mr John Stephens said that he bet on greyhound races during lunch time at the local TAB. While the CEO maintains that his actions did not breach GRV policy as he had not bet within work hours, I do not share this view and consider that his conduct as the head of the agency with responsibility for regulating greyhound racing in Victoria was not appropriate. The CEO submitted his resignation from GRV on 19 April 2012.
- Four integrity staff who breached GRV betting policies could not be terminated without compensation totalling \$55,044 being paid to them due to GRV's deficient management controls, monitoring and compliance systems and operational policies.
- Two senior managers who received first and final warnings for 'unacceptable workplace behaviour' for betting during work hours, received an increase in their salary one month later. In addition, one of these managers also received a \$10,000 bonus payment despite having been identified by the Racing Integrity Commissioner as having placed 4,409 bets totalling \$508,705 during work hours over a three-year period. This senior manager left GRV in mid-March 2012.
- Greyhound ownership is banned for stewards, graders and form analysts. In October 2011, the Board decided not to extend the ban on greyhound ownership beyond those designated positions which might have the potential to affect the outcome of a race, with further review in 12 months time. It is my view that greyhound ownership by staff, even beyond those currently prohibited, presents a risk to the integrity of greyhound racing.

8. While GRV has implemented changes to betting and greyhound ownership policies in late 2011, these initiatives were undertaken subsequent to the Racing Integrity Commissioner's investigation. Such policies and practices are critical to ensure the integrity of greyhound racing and should have already been in place at GRV.

One manager ... placed 4,409 bets totalling \$508,705 during work hours over a three-year period.

9. GRV has engaged in a program of review and taken action to implement measures to improve GRV's compliance with statutory obligations since September 2011 following Mr Peter Caillard's appointment as Chairman of GRV.

Tendering and contracting practices

10. My investigation also identified that GRV has primarily engaged the same four architectural, lighting, engineering and works consultants to redevelop greyhound clubs' infrastructure for over 10 years without public tender. This is in breach of the *Project Development and Construction Management Act 1994*. In the last five years, GRV has paid over \$3.25 million to these consultants for track redevelopment works.
11. These arrangements have assisted the consultants to achieve and maintain a 'sole supplier' position to the greyhound racing industry.

My investigation identified a range of inappropriate practices and behaviours involving GRV staff.

12. Since 2009 GRV has facilitated industry infrastructure projects totalling \$14.2 million. GRV does not have a formal policy or procedures in relation to capital works procurement. GRV procurement processes are set out in a one-page document. These processes fail to include practices which will ensure open and fair competition, transparency and probity in procurement.

Governance related issues

13. My investigation also identified a range of inappropriate practices and behaviours involving GRV staff. In most cases, senior staff were either aware of or involved in the issues investigated by my office. The issues included:
 - conflicts of interest by the CEO and GRV staff not being identified and managed
 - inappropriate acceptance of gifts and hospitality by GRV Board members and staff
 - inappropriate expenditure on hospitality by GRV senior management and staff
 - inappropriate use by staff of the GRV email system.

14. The CEO's response to my draft report reflects a lack of understanding of public sector principles such as conflict of interest, good governance, ethical behaviour and accountability. Mr Stephens said that, in his 12 years as CEO, he had never assumed the role of a public servant and had never been given directions regarding his responsibilities in managing a public sector body.
15. In this regard I consider that the CEO acted unprofessionally and failed to provide leadership to the organisation.

The CEO acted unprofessionally and failed to provide leadership to the organisation.

16. It is concerning that GRV did not previously have in place mechanisms to assess and monitor organisational compliance. As this report evidences, issues relating to integrity, non-compliant tendering practices and poor governance had been allowed to continue over a number of years undetected.

Recommendations

17. I have made a number of recommendations including that:
 - GRV implement a policy to prohibit the ownership of greyhounds by all staff employed by GRV.
 - The Racing Integrity Commissioner review the conclusions and recommendations of this report with a view to assessing their applicability to the other racing codes in Victoria.
 - The Minister for Racing consider whether there is a need to further strengthen GRV's Board to ensure that GRV can meet the future challenges of the greyhound racing industry.
 - GRV review its tendering procedures and practices within three months to ensure that they comply with relevant legislative and government procurement guidelines.
 - The Office of Racing and Gaming ensure that agencies seeking funding comply with relevant legislative and procedural requirements in relation to procuring goods and services and construction management.
 - GRV staff be trained in how to identify and deal appropriately with conflicts of interest.
 - GRV commission a comprehensive audit of its governance and management framework.
 - GRV limit access to internet gambling and betting websites to those staff with a genuine business need to access such sites.
18. In response to my draft report, GRV's Chairman Mr Peter Caillard said:

[GRV] accepts the report and regards it as an opportunity to make considerable improvements to its operations.

1. Background

My investigation

19. In November 2011 I received information from a number of sources regarding the tendering and contracting practices of Greyhound Racing Victoria (GRV). The information alleged that major contracts for redevelopment and construction works at greyhound racing tracks across the state were awarded to the same small cluster of contractors without public tender.
20. Concerns were also raised in the information provided to my office about a culture at GRV of staff betting on greyhound racing within Victoria, the industry that they were also charged with overseeing.
21. On the basis of the information received I decided to commence an own motion investigation into GRV's tendering and contracting arrangements and other matters under section 14 of the *Ombudsman Act 1973*. On 23 January 2012 I notified the Minister for Racing of my intention to conduct the investigation.
22. As it was likely that my investigation would consider issues relating to integrity, and in particular gambling by GRV staff, I also informed the Commissioner for Racing Integrity of my intention to conduct this investigation.

Investigation scope and methodology

23. My investigation focused on:
 - redevelopment works undertaken by GRV over the last five years at the following greyhound racing clubs:
 - Geelong – \$8.24 million redevelopment including the construction of two new tracks and grandstand.
 - Bendigo – \$ 4.29 million track and grandstand redevelopment.
 - Healesville – \$1.97 million redevelopment of grandstand and track.
 - Warragul – \$1.63 million redevelopment of grandstand and track.
 - integrity issues associated with GRV staff betting and ownership and training of greyhounds.
 - compliance issues identified during my investigation.
24. My investigation involved:
 - Interviewing witnesses including:
 - staff from GRV and the Office of Racing and Gaming
 - the Commissioner for Racing Integrity and his staff
 - private sector contractors involved in providing services to the GRV

- other witnesses who are participants in the greyhound racing industry.
- Examination of documentation obtained from GRV including emails of staff members.

Greyhound Racing Victoria

25. GRV is a public body established under the *Racing Act 1958*. Its functions are to:
- register greyhounds for greyhound racing or for stud or other purposes and to regulate the breeding, kennelling and verification of lineage of greyhounds for racing or stud purpose
 - control the sport of greyhound racing
 - carry out research into aspects of greyhound racing to assist in planning future development
 - promote the sport of greyhound racing
 - exercise such powers, functions and duties as are conferred on the Board under the Act
 - conduct greyhound races.
26. In 2010-11 GRV generated revenue of \$52.1 million¹, and achieved a profit of \$2 million. Over the last decade, greyhound racing has become the fastest growing of the three racing codes in Victoria.² Its market share has risen from 14.2 per cent in 2002 to 19.7 per cent in 2011 and it has the second largest share of the codes, behind thoroughbred racing (65.6 per cent).³
27. Seventy-eight per cent or \$41 million of the revenue generated by GRV in the 2010-11 financial year was derived from gambling via its agreement with Tabcorp.⁴
28. There are 13 greyhound race clubs in Victoria, two in the metropolitan area and the remainder in regional locations. The clubs consist of a committee, club manager and 1-2 full or part-time staff. Committee members are volunteers who are elected by club members.
29. According to GRV's corporate documents, over recent years there have been a number of achievements within the greyhound racing industry. These include:
- increased prize money for all stakeholders in the industry
 - increased greyhound racing's market share
 - better tracks and facilities
 - a sound financial position

1 GRV 2010-2011, Annual Report, page 20.

2 The three codes are thoroughbred racing, harness racing and greyhound racing.

3 GRV 2010-2011, Annual Report, page 20.

4 GRV 2010-2011, Annual Report, page 20.

- improved animal welfare
- stronger links to the community given GRV's involvement in charitable initiatives.

30. Notwithstanding these achievements, my investigation has identified that more attention is required by GRV in managing its internal operations. Specifically, my investigation identified numerous areas of non-compliance with legislation, the Victorian Public Sector Code of Conduct⁵ and GRV's policies and procedures. These non-compliances have prompted concerns to be expressed to my office by community members about the integrity of greyhound racing as 'controlled by GRV' and the integrity and transparency of GRV's capital works program. My investigation of these issues is outlined below and include the following areas:

- Gambling by GRV staff including those staff in integrity-related positions
- Ownership of greyhounds by GRV staff
- Tender processes and practices
- Conflicts of interest
- Declaration of gifts and hospitality
- Hospitality expenditure
- Staff termination payments
- Staff use of the email system.

31. In mid-March 2012, Mr Mark Dooley, GRV's Manager Infrastructure and Clubs left GRV following his resignation in late 2011. On the 19 April 2012, my office was advised that the CEO Mr John Stephens had resigned and will leave GRV in July 2012.

⁵ Code of Conduct for Victorian Public Sector Employees, 1 July 2007.

2. Integrity issues

Racing Integrity Commissioner's investigation of GRV staff betting

32. In early 2011 the Office of the Racing Integrity Commissioner (the Commissioner) commenced an own motion investigation into the betting activities of GRV employees. In December 2011 the Commissioner received information and as a result, undertook a further investigation involving two GRV staff. The outcomes of the investigations were brought to my attention.
33. While the Commissioner's investigation report is yet to be finalised there are several matters he examined which I consider to be relevant to my investigation.
34. Enquiries conducted by the Commissioner's office with betting agencies Tabcorp and Betfair over a three-year period (2008-2011) identified 11 GRV staff who were in breach of GRV policies and/or Greyhounds Australasia Rules in relation to their betting activity. The Commissioner identified that the 11 GRV employees breached GRV policies and rules, ranging from an employee placing one bet of \$4 to another who placed 4,409 bets totalling \$508,705.
35. The employees identified consisted of five stewards, two form analysts, one grader, two senior managers and one data operator.⁶
36. At the time of the Commissioner's own motion investigation relevant GRV betting policies included:
- 2.3.4 GRV graders are NOT permitted to be involved in any form or betting on any greyhound racing event
 - ...
 - 2.4.3 GRV Form Analysts are NOT permitted to be involved in any form of betting on any greyhound racing Event [sic]
 - ...
 - 2.5.4 GRV Stewards are NOT permitted to be involved in any form of betting on any greyhound racing event
 - ...
 - System Three - Control ... GRV employees are NOT permitted to be involved in any form of betting during their hours of employment at GRV;
- [emphasis by GRV].
37. In addition, the Greyhounds Australasia Rule 104(7)(d) states: 'A Steward shall not directly or indirectly engage in any betting transactions at any meeting at which he officiates'.

⁶ Stewards oversee the running of race meetings including ensuring all kennelling procedures are adhered to, directing or participating in the taking of samples for drug detection, and supervising the conduct of race day officials and staff. Form Analysts perform pre and post race analysis on greyhound meetings and provide form to associated customer and stakeholder groups. Graders are responsible for the impartial grading and box draw of race meetings and qualifying trials conducted.

Outcomes from the Commissioner's investigations into GRV staff

38. The preliminary results from the Commissioner's own motion investigation [involving nine of the 11 staff] were provided to GRV's Integrity Sub-Committee (ISC) in July 2011 to complete the investigation and take any necessary disciplinary action. The results of a further investigation involving two GRV employees was referred by the Commissioner to GRV in December 2011.
39. At the conclusion of the ISC investigations in August 2011 and early 2012, the following actions were taken against GRV staff:
- three stewards were terminated and one given a first and final warning
 - one form analyst resigned and the other given a first and final warning
 - two graders were terminated
 - two senior managers were given first and final warnings
 - the data operator was given a first and final warning.
40. Mr Mark Dooley, a senior manager who received a first and final warning, made 14,397 bets totalling \$1,657,860.50 over the three-year period examined. Of his betting activity:
- 12,397 bets totalling \$1,462,154.50 were placed on greyhounds
 - 4,409 bets totalling \$508,705 were placed during his hours of employment at GRV.⁷
41. In response to my draft report Mr Dooley said:
- The information is incorrect and this was acknowledged by the GRV Integrity Sub-Committee last year during their investigations. The figures in relation to the bets placed during work hours are incorrect. The total of 4409 bets you have provided includes bets placed while on annual leave, during public holidays, lunchtimes and after hours (given I finished work at 4pm on a Friday most weeks), these are clearly not my hours of employment as per the GRV gambling policy.
- ...
- I conducted my own analysis of a sample period of my phone betting account and if bets placed on annual leave, public holidays, lunchtimes, while in the car driving to sites and after 4pm on a Friday are not mistakenly included, the actual total number of bets placed is well below 25% of the figures that have been quoted.
42. Enquiries with a member of GRV's ISC confirmed that the volume of Mr Dooley's betting did not vary significantly from that identified by the , Racing Integrity Commissioner.
43. At interview, GRV CEO Mr John Stephens said that, prior to the Commissioner's investigation, he believed no GRV employee had been investigated for breaching its betting policies.
44. On 1 September 2011 GRV released a new betting policy which was later updated on 1 November 2011. This new policy prohibits all stewards, graders, form analysts, Board members and full-time GRV employees from:

⁷ Betting information was identified by the Racing Integrity Commissioner during his own motion investigation.

A 1 (a) betting, gambling or wagering on any greyhound racing event.

...

A3 (b) betting, gambling or wagering on any authorised activity (for example all codes of racing, and sports betting) during any of their hours of employment at GRV.

45. In response to my draft report, GRV's Chairman said that '... the total ban on staff betting on greyhound racing went much further than the approach taken by any other [racing] code ...'

Payments made to terminated staff

46. Following the Racing Integrity Commissioner's investigation, four terminated staff – a grader and three stewards – initiated action with Fair Work Australia (FWA) for unfair dismissal.
47. These employees were employed in 'integrity' related positions and as such, they were forbidden to: place bets on greyhound racing (including betting on races where they were officiating, had undertaken the grading or box draw process); and betting (any form) during work hours.
48. All four matters were settled by GRV before the FWA process had concluded. My investigation identified that notwithstanding that the employees had breached GRV rules/policies, they raised arguments that had potentially exposed GRV to the claims of unfair dismissal.
49. The arguments raised by the employees included:
- Staff were not provided with GRV's Integrity Policy until after the betting had occurred.
 - Breaches of the relevant GRV policies did not stipulate termination as a potential outcome, and that any termination action was in contradiction to individual employment agreements.
 - There had existed for some years a culture of gambling at GRV and betting by staff on greyhound races was known to senior management. For example, three of the staff members' submissions to FWA contended that senior management at GRV (including the CEO), were either aware of the betting activities and/or undertook betting on greyhound races. The submissions from two employees were as follows:

Mr Dooley responded to the GRV's Integrity Sub-Committee:

As I have advised you previously, my superior was fully aware of the betting activities and at no time were they undertaken in secret, in fact it was done very openly. As my superior was aware of my employment contract, his knowledge in this matter, would constitute, as a matter of law a waiver of the requirements set out in the contract. For these reasons the committee should make its decision independent of the CEO.

A steward's Fair Work Australia application (handwritten) stated:

There is a culture of gambling at GRV. A high percentage of staff have breached the contract of gambling during work hours including people who were on the panel that sacked me. Why have I been singled out and other staff haven't been investigated.

50. GRV's Chairman advised that:

... none of these arguments were tested and GRV consistently denied liability. Further, GRV has advised me that the matters were settled to avoid the additional cost, effort and uncertainty associated with continuing to contest each of these claims.

51. Mr Dooley's supervisor was the GRV's CEO, Mr John Stephens. At interview on 2 April 2012, Mr Stephens responded to this issue as follows:

I was aware that he [Mark Dooley] was betting, certainly not to the extent that was revealed by the Racing Integrity Commission ... there was a flexible working structure, he was probably spending most of that time working in excess of 12 hours a day. ... My view was that in the context of that 12 hours, it was reasonable what he was doing ... having a bet was not an issue in that he was working extra hours ... finding out the amount he was betting, that was a shock to the system.

...

In hindsight ... I don't know whether he knew how to stop. ...

I think that someone's private business is their private business if he's a gardener, punter or something else, that's his private business. ... Given what I know now, yes he would have been betting too much. I think that his [Mark Dooley's] punting was a private matter. ... The extent of his punting was a private matter ... I was not aware that he was sitting there using extravagant amounts of time punting.

...

... If people are at a senior management level you expect them to conduct themselves in a reasonable way. I don't see it as the role of the CEO to be calling in to every office every hour of the day finding out what they're doing. I expect them to have some responsibility for the position.

52. Mr Stephens also confirmed that prior to the Racing Integrity Commissioner's investigations into staff betting, there were a number of GRV staff who would bet regularly. When asked whether any employees had been subject to disciplinary action prior to the Commissioner's investigation Mr Stephens said:

I can't recall any. As I say, there was probably more of a culture where 25 per cent of people did bet. It wasn't seen as a huge issue.

53. In response to my draft report, Mr Stephens said:

Prior to September 2011, GRV betting policy precluded only those in integrity related positions (grading, stewards, form analysis) from betting on greyhound races.

54. I note also that GRV's former betting policy dated 1 August 2008 prohibits staff from betting during work hours.

55. When asked as to whether his attitude towards staff betting at work had sent mixed messages, Mr Stephens said:

Look, possibly. You know, we - we - the board had a deputation from industry leaders in January [2012], expressing to the board that they thought they ... were totally out of order ... And it was a very, very strong message - very strong statement, and I think what it did was highlight the difference between what perhaps the industry expects and what compliance expects. The view of the industry is still back in the seventies.

56. GRV's legal advisors advised GRV to settle the termination process with the four staff. GRV was required to enter into a Deed of Release with each staff member and to pay a total of \$55,044 in eligible termination payments to the four employees. These payments were recorded on GRV's payroll as a 'Golden Handshake'.
57. In response to my draft report, Mr Stephens said:
- The term 'Golden Handshake' is an internal classification used by the GRV payroll company ... for the purposes of taxation of amounts. It does not appear on a group certificate and it does not reflect in any way they [*sic*] type of payment made.
58. The Deed of Release for three staff terminated by GRV allowed the staff to provide a letter of resignation to GRV relating to the termination of their employment. However, GRV publicly described the termination of staff as 'sackings' in its media releases.

Betting by CEO Mr Stephens

59. Mr Stephens also confirmed on oath at interview that prior to the Racing Integrity Commissioner's investigation and the Board's introduction of the new betting policy in late 2011, he had also placed bets on greyhound races on a semi-regular basis. He told my officers that he placed these bets at the TAB outlet near GRV's head offices. He said:

Q: When was the last time you had a bet [on a greyhound race]?

A: I don't think ... I could tell you. Certainly since all of this – the racing integrity thing blew up in about June or July of last year [2011]. I, ... don't think I've had a bet since then.

Q: But before then ... when was the last time?

A: I had a bet on a – maybe a – I wouldn't say a weekly basis, but at times what I used to do – there's a TAB in North Melbourne, and if the car took me that way, I – I'd often go and sit in – if I went up the street, I'd sit there and more observe – just see how TAB sheets were, and things like that. I might couple – have a \$50 quadrella, a \$100 quadrella.

...

... some weeks I might've had ten bets; some weeks I mightn't have had a – mightn't have had a bet for a month.

60. I note that under the GRV policy highlighted above, 'GRV employees are not permitted to be involved in any form of betting during their hours of employment'.
61. In response to my draft report Mr Stephens said:
- My statements do not confirm that (prior to the Commissioner's investigation in mid-2011) I placed bets during work hours [his emphasis] on a semi regular basis. In relation to the second question:
- (a) *if the car took me up that way*—relates to driving home after work
- (b) *if I went up the street*—relates to the very occasional lunch break strolls.

62. In relation to betting Mr Stephens said:

... it's an interesting dilemma when a bet is a bet. And I suppose in the strict sense a dollar's a bet. I – I wouldn't consider \$100 a bet, I'd consider it an interest more than anything. But since our issues with the Racing Integrity Commissioner, I don't think I've had a bet on anything anywhere.

63. My investigators made enquiries with the Racing Integrity Commissioner in relation to whether Mr Stephens had any betting accounts. Further enquiries were made and it was identified that Mr Stephens did not have any betting accounts with either Tabcorp or Betfair, the agencies examined by the Racing Integrity Commissioner.

Performance bonus and progression payments made to GRV senior managers

64. In early September 2011, the two senior managers – Mr Mark Dooley and the other senior manager – who had both received first and final warnings for breaching GRV policy by betting during work hours, received significant salary increases.

65. The letters containing the warnings dated 4 August 2011:

- describe Mr Dooley and the senior manager as having 'demonstrated unacceptable workplace behaviour' and, their actions having the potential to 'result in damage to GRV's credibility and reputation as a responsible Statutory Body'.
- warn that any 'further error or failure to properly carry out your duties and GRV policies & procedures **will be grounds for summary termination of your employment by GRV** [emphasis by GRV].

66. Despite these warnings, the senior manager received a five per cent salary increase totalling \$6,478. Mr Dooley received a salary increase of 8.2 per cent totalling \$10,978 as well as an additional performance bonus of \$10,000. This was despite his having been found by the Racing Integrity Commissioner to have wagered over \$500,000 in a three-year period during work hours.

67. When asked at interview how Mr Dooley in particular had received such a significant bonus despite having breached GRV policies, CEO Mr Stephens said:

I think the general view was to try and separate the two issues. ... All of this information went before the Board ... I don't recall there being anything that said they should be considered as two different issues but there was ...on the basis of there being a 3-year understanding of what would happen this is what your wages would be ... to essentially the Geelong Project and it was felt that he [Mark Dooley] had fulfilled all those obligations irrespective of the gambling side of things.

68. At interview on 13 April 2012, Mr Dooley told my officers that he felt that he deserved the salary increase and bonus payment given his hard work over a three-month period in managing the Geelong greyhound racing club. He also said that in view of the first and final warning he received for breaching the betting policy, he 'would have understood ...' if GRV had not paid him the increase in salary and the bonus payment.

69. In mid-March 2012 during my investigation, Mr Dooley left GRV following his resignation in late 2011.
70. GRV's Chairman said in response to my draft report:
- ...these [salary] increases were determined by the GRV Board and sent for approval to GSERP [Government Sector Executive Remuneration Panel] on 17 March 2011, a number of months before these [first and final] warnings were given.
71. In my view, the increases previously approved by the Board should have been reconsidered as part of the disciplinary action taken against the senior manager and Mr Dooley.

Ownership of greyhounds by GRV staff

72. Up until October 2011 there was no restriction on GRV staff owning and racing greyhounds and, in fact, it was common practice for GRV staff to have owned and raced greyhounds.
73. One former employee said at interview that at one stage, several staff from GRV's member services department had formed a syndicate and together bought and raced a greyhound. He said it was common for GRV employees to own or have an interest in greyhounds during his time there.
74. A current GRV manager confirmed that he had owned greyhounds for several years and presently had around 20, including pups, which he hoped to sell. He stated that in the past he had enjoyed some profits from his greyhound interests, but said that he had not had any success in recent times.
75. I also note that the Racing Act requires that at least one and not more than two Board members have experience in the greyhound racing industry. The Chairman Mr Caillard told my officers that one current Board member has a 1/36th interest in a greyhound. He said, '... the interest is so minor that I think there is no real issue with integrity concerns and I don't think it's a perception issue'.
76. Several staff were asked how GRV managed the risk of those staff who owned greyhounds from obtaining any advantage from race information generated by GRV i.e. box draws. Staff told my officers that GRV was subject to regular auditing of its box draws and that the industry closely scrutinised all greyhound racing activity. The staff also said that GRV placed considerable reliance on staff to act ethically and in line with established practices.
77. Following the outcomes of the Racing Integrity Commissioner's investigation on 25 October 2011 GRV introduced its policy *Greyhound Ownership by GRV Board Members and Staff*. The policy states that:
- GRV Board Members and GRV Staff (other than those designated positions which might have potential to effect [*sic*] the outcome of an event
- Stewards, Graders, Form Analysts) are permitted to own greyhounds - on the clear principle of 'hobby ownership' (i.e. non commercial) only.

In this regard, all whole or partial ownerships must be declared at bi-annual GRV declarations. Any new interests which might occur outside bi-annual declarations must be disclosed at the time they occur.

78. GRV's Chairman and the CEO were asked at interview how GRV distinguishes between 'hobby' and commercial ownership. Neither were able to provide my investigation with a clear definition and all agreed that it would be difficult to enforce this policy given the definitional challenges that the policy presented. At interview the CEO suggested that if a staff member won \$1 million in prize money they might still be considered to be a hobby owner. Mr Stephens said:

... basically about three per cent of greyhounds are profit ventures. So the odds are - everyone thinks they've got one of the three per cent, but statistically you'll probably get one of the 97. But if it is one of the three and wins \$1 million, you'd say "Well, how long has this been going on?". But I wouldn't call that strictly commercial. I'd say that's your - you've been very, very lucky.

79. Mr Stephens also said:

What I am implying is that any person who buys a pup may (in the lotto sense) get lucky. The ATO [Australian Taxation Office] does not consider 'one off' success as a commercial enterprise in racing.

80. Mr Stephens also said that he considered GRV's policy in relation to staff ownership of greyhounds to be inconsistent with the total prohibition on betting. At interview Mr Stephens said:

I guess it seemed a bit strange to me - and I made the point at the board meeting - is once you brought in this zero tolerance about betting, I said, "Well, how can you then agree to own greyhounds? It's the same argument".

81. In this regard, GRV's Chairman Mr Caillard also said:

... the focus has been the gaming. For me to try and put in restrictions on ownership at the moment its ... there's been a lot of changes at GRV in six months and I've been demonised for what they call the focus on integrity ... but its been a lot of change very quickly in one area. As far as the ownership, its time might well come I just think to do it now or to do it then might have been too much for one organisation like GRV. ... For Harness and Thoroughbred it is the norm for them all to own animals ... we certainly have gone further than the other codes ... they're quite the opposite, you would find people are appointed because they own horses...

...

If you asked me if it's a good idea to ban betting and ownership, my personal view is yes. But I would do it for each code. ... I don't think it is appropriate for the Boards of the governing bodies to be betting on the sport that they administer and I don't think it is appropriate or ideal, I should say, for the governing bodies to be owning an animal in the races that they govern. ... I don't like it.

82. Mr Caillard said that to ban the ownership of greyhounds would at present be inconsistent with the governing legislation, the Racing Act, given the requirement for at least two Board members to have 'experience in the greyhound industry'. He also said that the Board has resolved to reconsider GRV's *Greyhound ownership by GRV Board Members and Staff* policy in 12 months time.

Conclusions

83. Prior to the Racing Integrity Commissioner's investigation and the introduction of GRV's new betting policy in September 2011, a culture existed at GRV of staff betting on racing, including greyhounds, during business hours in breach of GRV policies. In the case of Mark Dooley, the Racing Integrity Commissioner had identified more than 4,400 bets, totalling over \$500,000 placed during his hours of employment over a three-year period without his conduct being addressed.
84. Several of GRV's Senior Management Team, including the CEO not only ignored this behaviour, but were also active participants in betting. This culture had been allowed to continue for many years.
85. In my view, betting by the CEO on greyhound races which are subject to regulation by GRV is not appropriate and sets a poor example and sends mixed messages to staff and those within the industry.
86. Whilst I accept that Mr Dooley's position was not one where he could directly influence greyhound races, he and other staff have had unrestricted access to race information generated by GRV in the normal course of its business.
87. GRV's management controls, monitoring and compliance systems and operational procedures were so deficient that key integrity staff who breached operational policies could not be terminated without compensation being paid to them. In my view, this was an inappropriate use of public funds and reflected the insufficient attention paid by GRV's board and senior management to ensuring good governance, compliance and integrity measures were in place and complied with in GRV. These were not one-off breaches but a pattern of behaviour that went unchecked for a number of years.
88. I note that whereas GRV allowed three employees to 'resign' from their employment, GRV's media releases stated that the employees had been terminated for misconduct. This is a misrepresentation of the facts and not appropriate.
89. Rewarding senior managers with salary increases and a bonus who less than one month earlier had been found to have breached GRV's policies for 'unacceptable' behaviour, was also inappropriate. The Board should have reconsidered the payment of the salary increases and bonus as part of the disciplinary action taken against the relevant staff.
90. GRV's current policy regarding staff ownership of greyhounds for 'hobby' purposes, is inconsistent with its total prohibition on staff betting on greyhounds. Without definitions of what constitutes 'hobby' or non-commercial ownership, the policy would be problematic to enforce. The Board has in effect endorsed a policy which is unenforceable.
91. I do not consider that the risks presented by those staff owning greyhounds to the integrity of greyhound racing, can be adequately managed by the current policy. In my view, the policy should be amended so that all GRV staff should not own greyhounds.

92. On the issue of betting Mr Stephens said:

It is undisputed that prior to the Racing Integrity Commissioner's investigation, GRV Policy did not preclude most staff from betting on greyhounds. Some staff were found to bet during business hours in breach of GRV policies.

93. Mr Dooley said:

There was no information relating to betting at GRV that was available to me, that is not available to the general public.

94. GRV's Chairman responded that:

It is a positive step that in September 2011, the Board of GRV prohibited staff from betting on greyhound racing, restricting the likelihood of access to [race] information being abused.

...

It is acknowledged that the GRV prohibits staff in positions which might have potential to affect the outcome of an event (such as stewards, graders or form analysts) from owning greyhounds. While the GRV Board's decision not to extend the ban to all GRV staff could be seen as inconsistent with its total prohibition on staff betting on greyhounds, the Board must also have regard to the provisions of the Racing Act. Definitions of what constitutes "hobby" or non commercial ownership are required for the current policy to be effective and avoid the potential for impact on the integrity of greyhound racing.

95. Mr Caillard also said that since September 2011, GRV had 'significantly expanded its focus' on matters relating to law and corporate governance. In particular it had:

- announced a new betting policy which included a 'blanket ban' on all staff and Board member betting on the greyhound code
- prohibited staff in designated integrity positions from owning a greyhound
- formalised requirements for regular betting audits in February 2012
- reconstituted the Finance and Integrity Sub-committees in August and September 2011
- adopted a new 'balanced scorecard' approach to remunerating the CEO and senior management.

96. Such policies and practices are critical to ensure the integrity of greyhound racing and had they been in place earlier a number of the issues identified in this report could have been avoided.

Recommendations

I recommend that:

Recommendation 1

GRV implement a policy to prohibit the ownership of greyhounds by all staff employed by GRV.

Recommendation 2

The Racing Integrity Commissioner review the conclusions and recommendations within this report with a view to assessing their applicability to the other racing codes in Victoria.

Recommendation 3

GRV take into consideration any disciplinary or performance issues when it is considering awarding staff salary increases and/or bonus payments.

Recommendation 4

The Minister for Racing consider whether there is a need to further strengthen GRV's Board to ensure that GRV can meet the future challenges of the greyhound racing industry.

3. Tender processes and practices

Compliance with tendering policies and practices

97. As a public body, GRV are bound by the following legislation, policies and guidelines in relation to the engaging of contractors and consultants for its construction works:
- *Project Development and Construction Management Act 1994*
 - *Ministerial Direction No 1: Tendering Provisions for Public Construction, July 2008*
 - *Ministerial Direction No 2: Guide to Contractual Provisions for Public Construction, June 2000*
 - *Code of Practice for the Building and Construction Industry.*
98. Typically, GRV's Infrastructure department undertakes public works in three fields requiring tendering and contracting:
- construction of racetracks and kennel blocks
 - lighting and electrical
 - patron facilities such as grandstands.
99. My investigation identified that GRV have engaged the same consultants to provide the following services for nearly 20 years without going to public tender:
- architectural, lighting and engineering services
 - installation of racetrack rails and lures.
100. In written advice provided to my office on 30 January 2012, GRV Chief Executive Officer (CEO), Mr John Stephens provided the following explanation for the continued engagement of these consultants without public tender:
- Given the highly specialised nature of these fields and a desire to construct infrastructure of a consistent minimum standard, GRV has for approximately 20 years primarily worked with four proven industry specialists.
- ...
- Given the highly specific nature of the work provided, proven track records and close attention to reliable and reasonable cost escalations over time, the four 'consultancies' for tracks, track machinery, patron facilities and track lighting are not tendered for. However from time to time GRV compares its infrastructure costs (normally related to track size, m² or equipment specification) with those experienced by like jurisdictions.
- However 'internal' tendering processes within each consultancy (GTS excepted), their associated cost estimates and overall budgets are scrutinised on a case by case basis by the GRV infrastructure department before submission for formal approval by the GRV Board.

101. GRV provided a table prepared in June 2010 comparing a Victorian greyhound racing club's infrastructure costs with the infrastructure costs of clubs in Tasmania, Western Australia and New South Wales.
102. My investigation also obtained an internal memorandum dated 20 June 2001 comparing quotes from architectural firms. The memorandum compares quotes for 'Architectural Consulting Services' from five firms. The memorandum recommended that two firms be included with another firm on GRV's list of consultants.
103. Despite this recommendation, my investigation identified that GRV has primarily used the same consultant for architectural works since 2001.
104. Public bodies such as GRV are bound by the *Project Development and Construction Management Act 1994* (the Act) and the *Ministerial Directions for Tendering Provisions for Public Construction* (the ministerial directions). The ministerial directions outline the following requirements in relation to tendering for 'Building and construction related consultancy services':
- \$25,000 or less – one written tender must be obtained
 - Greater than \$25,000 but less than \$150,000 – at least three written tenders must be sought
 - Exceeds \$150,000 – tenders must be sought from at least three pre-qualified consultants or tenders must be sought by public advertisement.
105. Figures obtained from GRV confirm that in the last five years, GRV has paid over \$3.25 million in consultant fees for works related to track redevelopment/major public construction work. The following consultants were paid:
- | | |
|--------------------------------------|----------------|
| • Architecture consultant | \$1,061,418.82 |
| • Engineering consultant | \$586,821.00 |
| • Rails and Lure consultant | \$1,378,377.89 |
| • Lighting and Electrical consultant | \$226,630.50 |
106. None of these consultants had 'pre-qualified' status as referred to in the ministerial directions.
107. In all four major capital works projects examined by my office⁸, the consultant fees exceeded \$25,000, and in several instances, the fees ranged from \$100,000 to \$250,000.
108. The ministerial directions state that the only circumstances where a department or public body can be exempted from these requirements is where the relevant Minister or Accountable Officer certifies in writing that special circumstances apply. In these instances the Minister or Accountable Officer shall determine the procedure to be used.

8 Redevelopment works at the Bendigo, Warragul, Healesville and Geelong greyhound racing clubs.

109. My investigation confirmed that GRV has never received approval from the Minister to exempt these consultancy services from an open public tender process. In an email responding to my investigator's enquiry regarding this exemption, GRV's Chief Financial Officer (who has worked at GRV for around 20 years) wrote:
- I am not aware of the tendering provisions or any exemption. It maybe worthwhile checking when these [the tendering policies and procedures] were sent to us & also if by virtue of being non-budget that the provisions are exactly the same.
110. At interview on 20 March 2012, GRV's Chairman, Mr Peter Caillard said that the Board had recently asked its CEO, Mr John Stephens for an assurance that GRV's tendering and contracting practices were compliant with relevant government policy. Mr Caillard said that Mr Stephens was unsure of the tendering requirements that GRV were subject to and undertook to seek legal advice on this matter.
111. The CEO's request for the legal advice was in the following terms:
3. What expectations (compliance or otherwise) are there of GRV in regards tendering and/or contracting practices?
112. My investigation obtained a copy of the legal advice dated 23 March 2012 which concludes that '... GRV is **not** therefore mandatorily required to comply with any of the Victorian Government Purchasing Board Procurement policies' [emphasis added by legal advisor].
113. It appears that both the CEO and the legal practitioner are unaware of the existence of the Project Development and Construction Management Act.
114. The CEO at interview on 2 April 2012 confirmed that he was unaware of the Act. He said:
- I've - you've heard of hundreds of Acts, but if you said to me, do I know anything about it [the *Project Development and Construction Management Act 1994*] - no, I don't.
115. At interview Mr Mark Dooley, the former Manager Infrastructure and Clubs, at GRV confirmed that he was responsible for the tendering of all GRV works. Mr Dooley stated however that he was unaware of the existence of the Project Development and Construction Management Act and therefore its applicability to GRV.
116. My investigation identified that the Victorian Auditor-General's good practice guide - *Public Sector Procurement, Turning Principles into Practice*, was sent to all public sector agencies, including GRV, in October 2007. This guide has several references to the Act and public sector construction practices.
117. In response to my draft report, the Chairman said that my conclusion that GRV was in breach of the Project Development and Construction Management Act was 'incorrect and inconsistent with the firm view of GRV's legal advisors' and:

The *Project Development and Construction Management Act 1994* only applies to gazetted public bodies, GRV has not been gazetted and is not a public body for the purposes of that legislation.

118. GRV will only be subject to the Project Development and Construction Management Act if it is a ‘public body’ for the purposes of that Act. GRV’s legal advisors take the view that GRV is not a ‘public body’ for the purposes of that Act as it has not been gazetted and, in their view is not a ‘public statutory authority’ even though it was created by statute with the function to ‘control the sport of greyhound racing’. The difficulty with this view is that the definition of ‘public body’ in the Project Development and Construction Management Act is identical with that of ‘public body’ in the *Financial Management Act 1994* and GRV, while not having been gazetted under that Act, has conceded that it is a public body for the purposes of that Act. I consider that if GRV is a public body for one Act, it must also be one for the purposes of the other. I therefore remain of the view that GRV is subject to the Project Development and Construction Management Act and that it has not complied with its legislative obligations in this regard.
119. Mr Caillard also said:
- ... irrespective of the legal position, my Board is committed to adopting “best practice” for tendering. Although the legal advice suggests that GRV does not need to comply, the organization will amend its practices and procedures to comply regardless. This process has already commenced.

GRV’s tendering processes

120. GRV lacks any formal policy or procedures in relation to procurement, including procurement relating to major capital works projects. My officers requested a copy of GRV’s procurement and tendering policies from GRV’s Chief Financial Officer. The Officer confirmed that no such policies existed at GRV.
121. In response to my draft report, GRV’s Chairman said:
- The GRV Code of Practice (and previously the GRV Financial Code of Practice) provides that all tendering and procurement should have regard to Victorian Government Purchasing [*sic*] Guidelines.
122. Mr Dooley, former Manager Infrastructure and Clubs, provided a one page, 11 dot-point memorandum dated May 2010 titled, *Major Projects – Tendering (part of overall Capital Works Process)*. Mr Dooley said that he had developed the memo in response to a request about the tender process from the GRV Board. He said at interview that he was unaware of the process having been documented prior to this.
123. The memorandum provides a general outline of the processes GRV has traditionally undertaken for its construction projects and describes a general oversight role, and not that of a ‘project manager’s role’. At interview Mr Dooley confirmed that he did not perform a project management role in relation to GRV construction projects. He said:

I probably represent GRV's interests in the sense that there are experts in their field to project manage the job ... They'll [the consultants] project manage it [the job] but I'll may be at all the site meetings ... I'll be the person that deals with all the politics at club level if a committee member is not happy with what's happening, I'll deal with it, not the consultant. I will ensure they are doing the right job as in they are bringing it on budget and there is no money being wasted.

124. In response to my draft report Mr Dooley said:

GRV play very prominent hands on role in the initial project design, project requirements, communications, and setting of budgets. In essence GRV rely on the consultants to provide specific expertise i.e. Track (Engineering, Contractual and Site) and Building (Architectural, Contractual, Site and Building Regulations), GRV coordinate the design meetings and issue specific design instructions to the consultants, GRV check and endorse tender documentation that is complied by the consultants, GRV review tender submissions in conjunction with the consultant, GRV control the budget and sign off variations, GRV set the timeline, GRV provide all communication within the industry and to the State Government, GRV are on-site 3-4 days per week during the construction process and attend all site meeting.

125. A comparison of GRV's processes and the requirements of the Act and the associated ministerial directions is outlined in Appendix 1 to this report. The comparison highlights that GRV's current tendering procedures and practices do not comply with legislative requirements.

126. While GRV's tender processes provide a step-by-step approach to tendering, they do not provide guidance for staff about the key principles underpinning procurement-related activities. That is, how procurement is carried out. The principles for procurement include:

- value for money
- open and fair competition
- risk management
- transparency
- probity
- accountability
- ethical behaviour.⁹

127. GRV's tendering processes also do not consider the following aspects of the tender process: non-complying tenders; tenders received late; information provided to tenders during the tender process; record-keeping considerations; addressing conflicts of interests; and probity considerations.

⁹ Victorian Auditor-General's Office, *Public Sector Procurement-Turning Principles into Practice*, October 2007, Melbourne, page 3.

128. For example, a tenderer for the Bendigo grandstand redevelopment submitted their tender response on 20 May 2011, 3 hours 19 minutes after the tender closing time. The tender closing date/time had already been extended by two days. The Building Design Consultant conducting the tender process on behalf of GRV confirmed that the late submission of the tender was not noted or considered by him or GRV. In an email to my officers dated 23 March 2012, the consultant said:

... I have checked our files and cannot find a direct reference to the receipt time of the ... tender. ... Whilst this was not highlighted in our report, it was not of any concern to us as the submission was the highest and therefore not considered as part of the assessment.

129. The consultant also said:

The issue of this late tender should also be read in the context that the submission was nearly 25% higher than the lowest tender. Therefore, this submission was clearly not acceptable. It was not considered in our formal preliminary tender assessment to GRV. In fact, our impartiality is highlighted based on the fact the tender was late yet the highest. In deed our preliminary recommendation to GRV was to meet with the lowest tenderer. Our assessment was fully acceptable in accordance with the tender terms outlined in the tender document which is Natspec (Australian Standard) specification.

130. My investigation also identified a lack of building and construction knowledge amongst GRV staff. While Mr Dooley, the former Manager Infrastructure and Clubs, was undertaking studies in project management, he acknowledged at interview that most of his knowledge was learnt on-the-job. At interview he said:

No formal training for this role. I've been at GRV for 11 years so I suppose I saw the projects and had an awareness of what happens and understood this is the process for doing projects. You get permits and get costs and all that sort of stuff.

I have a good knowledge of the industry and having been there for so long I sort of saw what took place and understood that it has to go to the board and all that sort of thing. That was I suppose how I was trained up.

Selective tendering

131. At interview several GRV staff said that due to the specific expertise required and the limited number of contractors in the industry, there was 'little point' in undertaking public tenders for architectural, engineering, lighting and rail and lure services.

132. The two main consultants used by GRV said at interview that public tender processes generally presented some concerns and challenges for them including:

- the extended timeframe required to undertake a public tender
- the numerous submissions received from under qualified and inexperienced contractors.

133. Both consultants confirmed that it was their preferred approach to conduct selective tender processes. They said that they invited the manager at local greyhound racing clubs, local councils and private building surveyors to nominate local contractors. The contractors would then be invited to tender for the respective infrastructure projects. The consultants said that they had employed this approach over many years and that GRV had not raised any concerns with them regarding the tender process.
134. In response to my draft report, the consultant said:
- This local knowledge can be helpful. The final tender list would be based on the size of the building company, appropriate commercial registration and local reputation. The final tender is never sourced from one person. This is an acceptable and common practice in the public and private sector.
135. At interview, both consultants acknowledged however that there was an inherent risk of bias when requesting persons to nominate contractors. The engineering consultant said that he believed his assessment process for tender submissions was sufficiently rigorous to identify any contractor who was not suitably qualified or capable of delivering the specified works. In relation to obtaining a pool of contractors for the selective tender process for the Bendigo greyhound racing club, the engineering consultant said:
- They're all from councils, I rang council cos [s/c] I don't think the club could come up with [any contractors to request to tender]. I would have asked them there from council. I had a contact in local council ... and I also rang ... [a consultancy firm] up there and asked them if they had any local contractors ...
- ...
- [Council tells me] ... here's some guys that we use and they're competitive and we're happy with them in a global sort of sense [Re the successful contractor] ... that's how they got it
136. The engineering consultant said in relation to his approach in getting contractors for selective tendering: there 'was a risk but I've never found it' and that 'the people we've used, we've found to be okay'.
137. My investigation also identified that a significant number of contractors invited by GRV's consultants to submit tenders for major capital works ultimately failed to do so. My review of four GRV infrastructure projects¹⁰ highlighted that 45 per cent of contractors invited to tender, did not submit a tender. For example, six contractors were invited to tender for the redevelopment of the Bendigo racing track however only one contractor submitted a tender. The GRV board ultimately decided to award the contract for almost \$1 million to the only contractor that responded.
138. In response to my draft report, the engineering consultant said:
- Due to the project being in regional Victoria it could be assumed that the Bendigo Club personnel may have knowledge of suitable experienced local contractors, who have a reputation for their ability to undertake projects of this size in the town. However, in this case, the Club did not have any contractors that they knew of and could be recommended.

¹⁰ sup. note 8.

I phoned a contact at the Bendigo Council who has worked in the engineering projects area for some considerable time. We discussed the project and the type of work involved and he gave me the names of a number of contractors that had undertaken similar work for the Council successfully, competently and were well priced. I also contacted the engineering section of [a consultancy firm] in Bendigo, and went through the same process as above.

With this list, I then contacted each of the contractors and confirmed that they had undertaken the type of works required before explaining the timelines and if they were interested in the redevelopment of the Bendigo Greyhound track, their names were listed and tender documents were sent to their company. In this project, documents were sent to 6 contractors.

I find it is far better to list only companies who have a proven track record in the type of works required. Recommendations by the local council and other big organisations within the local area ensure that, as far as possible, only companies with the equipment, personal and organisational ability are short listed.

139. The consultants stated at interview that GRV had not specifically provided them with any guidelines to guide the tender process. They also stated that they were unaware of the Project Development and Construction Management Act and its requirements.
140. The Building Design Consultant said that he was a registered building practitioner (multiple registrations) and ‘... our tenders are based on AS 4120 Australian Standard Code of Tendering’.

Record-keeping

141. There were difficulties in obtaining tendering and contractual information from GRV in relation to the four major capital works projects examined. My officers attended the offices of GRV on 27 January 2012 to inspect all documentation relating to the major capital works programs at the Bendigo, Warragul, Healesville and Geelong racetracks. This documentation was held by Mr Dooley, then Manager Infrastructure and Clubs. When inspecting this documentation my officers noted that:
 - Files and documents were stored loosely and not in any order in cabinets and on the floor of Mr Dooley’s office. This included documents relating to projects that had finished more than two years earlier.
 - The records were incomplete and Mr Dooley and his assistant were unable to locate for all the four projects under review:
 - Copies of tender submissions and project tender evaluation reports
 - Copies of the signed contractor contracts entered into with GRV.
 - Mr Dooley was also unsure as to the whereabouts of all relevant documentation relating to the projects.

142. Two further requests for documentation not contained in the files held by Mr Dooley were made of GRV. My officers were advised by a manager that most of the information that was located was sourced from the consultants who had 'ran the tender processes'. However, key information, for example copies of signed contracts for construction and electrical works in respect of both the Geelong and Bendigo projects, do not appear to have been retained by GRV.

143. Mr Dooley said:

... all work over two years old was stored in my office filing cabinet and my desk draw i.e. Warragul Project. Contracts for Warragul, Healesville, Geelong and Bendigo projects were made available to the Investigating Officers at the time of their visit on the 27th January 2012, as per the list of documents received that was recorded by [the] investigator.

Grant funding provided to GRV by the Office of Racing and Gaming

144. GRV has received over \$7.3 million in government grant funding for infrastructure projects totalling \$14.2 million from the Regional Racing Infrastructure Fund (RRIF) since 2009.¹¹ The fund provides 'a source of financial support to racing controlling bodies for capital developments and improvements at non-metropolitan racing and training venues ...'. The fund requires a co-contribution from the racing code and/or relevant stakeholders before the funds are released.

145. My investigation reviewed the following eight applications submitted by GRV to the Office of Racing and Gaming for RRIF funding since July 2009. Details of the project, project cost and funding granted is provided below.

Table 1 – GRV RRIF funding applications reviewed during investigation

Application date	Project	RRIF funding received (\$)	Total cost (\$)	Proportion of project cost funded (%)
24 July 2009	Ballarat-function room	\$188,950	\$363,410	52.0
20 Aug 2009	Ballarat-new starting box	\$81,325	\$116,181	70.0
25 Aug 2009	Ballarat-new starting box	\$47,664	\$68,091	70.0
28 Aug 2009	Warragul-redevelopment	\$1,192,217	\$1,703,248	70.0
17 Nov 2009	Bendigo-desalination	\$86,897	\$124,138	70.0
4 Mar 2010	Geelong-redevelopment	\$4,337,473	\$6,398,439	67.8
27 Sep 2010	Healesville-redevelopment	\$375,000	\$1,500,000	25.0
5 Apr 2011	Bendigo-redevelopment	\$1,000,000	\$3,947,000	25.3
Total		\$7,309,526	\$14,220,507	51.4

Source: Information provided by GRV.

¹¹ In 2011 the State Government announced the establishment of the Victorian Racing Industry Fund (VRIF). Similar to the RRIF, the VRIF makes available funding of around \$48 million for the racing industry. Both the RRIF and VRIF will run concurrently until the end of the 2011-12 financial year.

146. To obtain RRIF grant funding, GRV must submit applications demonstrating the attributes of the project and particularly the benefit to the community to be derived from RRIF funding. GRV must also address a series of questions regarding the type of works and project management arrangements in place.
147. My review of GRV's applications to the Office of Racing and Gaming identified that funding had been provided notwithstanding GRV's responses to criteria within the applications being perfunctory in nature and lacking detail. For example, the following responses were provided by GRV when applying for government funding, including one request for over \$4.4 million grant funds:
- Q:** Demonstrated consultation with industry stakeholders and where applicable the broader community
- A:** Continued consultation with industry stakeholders by way of "Consultation Sessions" held at all regions around Victoria
- ...
- Q:** Consideration given to environmental protection and water saving opportunities
- A:** Due consideration has been given to environmental & water saving opportunities including a water recycling system.
148. In addition, the application forms make reference to agencies providing 'Supporting documentation for the project including: plans, 'QS' reports, letters of support etc'. This information was rarely provided in the applications reviewed, nor does it appear to have been a mandatory requirement to enable the provision of grant funding.
149. Despite this apparent lack of detail the Office of Racing and Gaming accepted all of the applications for government funding submitted by GRV since the RRIF program commenced in 2009.
150. Whilst the more recent VRIF application form requests more specific information from applicants, including copies of 'Quotations/tender documents', this again does not appear to be a mandatory requirement. The VRIF guidelines also make no reference to applicants having to demonstrate that the procurement/tendering processes undertaken are compliant with relevant legislation or government policies and procedures.
151. At interview, the Assistant Manager, Licensing and Development from the Office of Racing and Gaming confirmed that the extent to which GRV complies with relevant legislative procurement requirements is not assessed in the provision of grant funds, and that his office 'don't always see the tender documents'. The manager advised that the office's focus was more on the acquittal of funds and the outcome of the works projects.
152. The manager also said that he had noted that GRV had used the same consultants across the numerous applications he had reviewed in the last four years. At interview he said:

When you do look at them I guess they are similar ... the same firms pretty much all the time. And again I guess that's a balance well ok, its like when you get a good builder or electrician that's the guy you use rather than going off to somewhere else ... By the same token, is it a fair and equitable tender process if all of a sudden these same firms are winning all the time? So that is an area we can look at.

153. At interview, the Executive Director, Office of Racing and Gaming said:

We assumed ... we thought properly ... that a statutory agency would be acquitting its responsibilities in value for money – fair value in its procurements.

154. In response to my draft report, the Secretary, Department of Justice said:

GRV has an obligation to comply with all relevant legislation and government policies and procedures. The department has an expectation that, as a statutory authority, GRV will appropriately discharge those obligations.

... your report has identified a potential risk associated with the department's role in the current grants acquittal process. ...

The department agrees that the grants acquittal process could be strengthened. As such, I will write to the chairpersons of each racing controlling body to advise that the acquittal process will now include a requirement for confirmation by the chairperson of the relevant audit committee that obligations under Victorian Government Purchasing Board policies and guidelines have been fully discharged.

The department is committed to continuous improvement in all of its grants management processes, and the observations contained in your report will be fully considered in the refinement and improvement of these processes in the future.

Conclusions

155. The *Code of Conduct for Victorian Public Sector Employees* states that it is the responsibility of officers to be aware of the legislation they must comply with.

156. GRV has engaged the same consultants for architectural, engineering and lighting services without public tender and at significant cost for over 10 years. This is a clear breach of the requirements of the Project Development and Construction Management Act and Directions set out by the Minister for Finance. GRV remained unaware and failed to inform itself of its obligations in this regard for an extended period of time. It has only sought to clarify its obligations as a result of my investigation commencing.

157. Poor procurement practices give rise to risks including fraud and my investigation has identified that the following risks have not been adequately managed by GRV:

- Open and fair competition:
 - GRV procurement processes are not fair or transparent
 - GRV cannot be assured that it has obtained best value-for-money for the government and the community

- Transparency: Supporting documentation relating to multi-million dollar capital works were not available to enable scrutiny of the decisions taken; records were incomplete, and were kept in a disorderly manner on an office floor or retained at the offices of the consultant.
 - Probity: GRV procurement process does not ensure fairness, impartiality and integrity.
158. GRV has relied on historic arrangements as the most expedient means to progress its works program. In doing so, it has assisted key contractors to achieve and maintain their position in the market as 'sole suppliers' to the greyhound racing industry. This is also the rationale consistently cited by GRV's CEO and staff as the reason for not conducting public and open tenders.
159. GRV's tendering and contract management processes are out-dated and rely on a relationship with the major works consultants it has continually engaged over many years. I consider that there are a number of risks inherent both in GRV's procurement processes, and those managed by the consultants it engages.
160. Such 'closed shop' procurement practices and long-standing relationships with the same consultants have exposed GRV to ongoing criticism and scepticism from members of the community.
161. GRV has taken a largely 'hands off' approach to the management of major capital works projects and relies on consultants to provide project management services with very little oversight. In my view, this has arisen as a result of a lack of understanding of public sector procurement and project management skills by GRV staff and a failure to familiarise themselves with the relevant government rules and guidelines. For example, the practice of invitation only tendering processes managed by the consultants and, allowing managers from local racing clubs, council staff, private building surveyors and the actual consultants managing the tender to decide who will be invited to submit tenders, presents opportunities for bias and corruption.
162. Responses to GRV tenders have in several instances been poor with just over 50 per cent of the contractors invited having submitted a tender. In one instance five of the six contractors invited did not respond. This raises questions about whether GRV can be assured it has obtained value for money from the tender process, and whether suitably qualified and capable contractors are being nominated.
163. In response to my draft report, Mr Stephens said that he was not aware of the public sector requirements and that he had 'never assumed the role of a public servant'. I cannot accept that after 12 years in the position as GRV's Chief Executive Officer, that Mr Stephens did not understand his public sector responsibilities. Mr Stephens is a highly paid executive and therefore it is incumbent on him to ensure that he is aware of and complies with all legislation, rules, regulations and codes of conduct relevant to the performance of his duties.

164. Despite the Office of Racing and Gaming having portfolio oversight of GRV and providing it with over \$7 million in grant funding over the past three years, it has not taken any steps to ensure that GRV's procurement and tendering processes comply with relevant legislation.
165. In this regard, there has been a lack of rigour applied by the Office of Racing and Gaming in assessing applications for RRIF funds, from which grants amounting to \$45 million have been approved over the past four years. The responses within the applications submitted to the office by GRV were of a perfunctory nature. There are clearly risks where significant grant funds are expended by agencies in a manner where it cannot be demonstrated that value for money has been achieved.

Recommendations

I recommend that GRV:

Recommendation 5

Review its tendering procedures and practices within three months to ensure that they comply with relevant legislative and government procurement guidelines and the Victorian Auditor-General's Procurement good practice guide.

Recommendation 6

Ensure that deviations from standard tender processes are recorded and appropriately authorised by the Minister.

Recommendation 7

Ensure that staff involved in the procurement of goods and services and works associated with public construction have an appropriate level of knowledge and training in procurement policies, practices and procedures.

Recommendation 8

Take a more active role in the management and oversight of its capital works projects, consultants and contractors and ensures that tender processes and contracts are managed in accordance with legislation and government guidelines.

Recommendation 9

Ensure that all relevant records are retrieved from its contractors at the conclusion of each works project and that they are filed and maintained in accordance with the requirements of the *Public Records Act 1973*.

I recommend to the Department of Justice that the Office of Racing and Gaming review its grant application forms and assessment guidelines to ensure that:

Recommendation 10

Agencies seeking funding comply with relevant legislative and procedural requirements in relation to procuring goods and services and construction management.

Recommendation 11

Agencies provide with their funding applications, appropriately detailed submissions in response to grant guidelines, including required supporting documentation prior to the approval of grant funds.

The department's response

The Department of Justice has accepted these recommendations.

4. Other issues

166. My investigation identified a range of inappropriate practices and behaviours involving GRV staff. The issues identified reflect a lack of understanding of public sector principles such as conflict of interest, good governance, ethical behaviour and accountability. In most cases, senior staff were either aware of or involved in the issues investigated by my office. At interview, GRV staff, including the CEO, did not demonstrate a sound understanding of public sector principles and an understanding of the code of conduct for public sector employees.
167. Specific issues highlighted by my investigation included:
- conflicts of interest by the CEO and GRV staff
 - inappropriate acceptance of gifts and hospitality
 - inappropriate expenditure on hospitality
 - inappropriate use by staff of the GRV email system.

Conflicts of interest

168. GRV's *Financial Code of Conduct* states that:

Employees must take care to avoid conflicts of interest that arise during the course of their employment. ... In all aspects of their official duties, employees must act and advise with honesty and integrity, placing the industry interest ahead of their own.

...

Employees must not use their status within the industry to obtain a private benefit for someone else.

169. My investigation identified three examples involving the CEO Mr John Stephens and one instance involving other GRV staff where a conflict of interest between their public sector position and private interests were either not identified or avoided. At interview, all relevant GRV staff including the CEO, Mr Stephens demonstrated a lack of awareness of what constituted a conflict of interest and how such situations should be addressed.
170. For example, my investigation identified that:
- Mr Stephens and other GRV staff were provided with assistance and advice from a GRV consultant architect in relation to improvements to their private properties.
 - Mr Stephens improperly provided advice to his daughter and son-in-law in relation to negotiations regarding the son-in-law's departure arrangements and payout following his termination from GRV for breaching the betting policies.
 - Mr Stephens requested senior officers from Tabcorp consider his daughter for employment opportunities.

Use of GRV consultant for private works

171. A Building Design Consultant (the consultant) has provided architectural services to GRV for over 10 years without ever having been involved in a competitive selection process. At interview, the consultant estimated that GRV's work contributed to around 33 per cent of his total business.
172. My investigation identified that the CEO Mr Stephens, Mr Mark Dooley and another GRV manager on occasion sought and were provided with advice and assistance from the consultant in relation to private building matters over the last five years. Both Mr Dooley and the manager are responsible for GRV's infrastructure projects, the engagement of GRV contractors and consultants and the oversight of the consultant. Mr Dooley and the manager sought informal inspection advice from the consultant in relation to properties they were purchasing. Mr Stephens was undertaking major renovation works at his private residence and at interview, both Mr Stephens and the consultant could not recollect how the consultant came to provide services to Mr Stephens.
173. All three officers confirmed that these services were provided by the consultant at no cost to them. Mr Dooley told my officers at interview on 13 April 2012 that he gave the consultant a \$90 bottle of wine for the assistance he provided him.
174. In relation to this matter, CEO Mr Stephens said at interview on 2 April 2012:
- In all cases there is a friendship there but there's a commerciality about them doing their jobs and what they're expected to do.
- He [the consultant] has been to my house. He actually got involved with a project with my wife. She renovated our house and ... [the consultant] said to her what do you want to do ... He said I will help you ...
- [the consultant] assisted her in telling her where to go to places, what to do ... his attitude was that I could put you in line with a builder ... that sort of stuff.
175. In response to my draft report, the consultant said:
- The assistance provided by me to [the manager] and Mr Dooley were of a minor nature and as, I recall, verbal advice and only on one occasion. This was not a regular occurrence.
- ... I recall his [the CEO's] wife intended to undertake cosmetic, internal renovations to their house that had obviously not been renovated for 20 plus years. The cost referred to ... of \$140,000 would not be considered a major renovation in the building industry.
- The verbal assistance provided by me was relatively insignificant to the point I would not consider charging.
176. Mr Stephens confirmed at interview that the builder recommended by the consultant was engaged by his wife to assist with the renovations of his private residence in 2008-09. Mr Stephens told my officers that the renovations cost around \$140,000 - \$160,000. The same building contractor was also used by GRV to renovate their current offices in

West Melbourne in 2001-02 as well as undertake works at the Healesville racing club in 2007, 2009 and 2010. GRV paid the building contractor almost \$640,000 for these works.

177. In response to my officer's question about a potential or perceived conflict of interest as a result of using GRV consultants in a private capacity, Mr Stephens said:

I suppose some people could have that view ... my view is that you try and engage with people under normal commercial terms and I'd rather deal with people that I know are fair dinkum than not fair dinkum ... I'd rather deal with people that I know something about. If we've got to the stage of saying that we're not allowed to deal with people that you know then the world's going in a funny way ...

178. The consultant told my officers:

I try to be as courteous and polite and as helpful to all people who are my clients. Yes I've probably got to know them [GRV staff] fairly well and ... yeah I think they are thoroughly decent people. I have never been asked to do anything that I would consider to be illegal or compromising. I'd be shattered to think that what I'd done had compromised any of the people in there [at GRV].

I would expect that nearly everybody in there has asked me something about building. If I didn't know you I would charge you ... If I knew you and you said ... come out and have a look at this I would do it at no cost. [The manager], Mark [Dooley], [a former GRV employee] and John [Stephens] at all stages, I've offered some advice.

179. The consultant also said:

I am generally willing to impart my advice and expertise - within reason - particularly to those who know me.

180. The GRV manager said at interview:

I had a final inspection with my house when it was built and I had the consultant attend with my builder and he did that as another person to have there for me and just go round and look at if he thought anything was wrong. It was a favour to me but he said look I'm happy to go along with the final inspection.

181. In response to my draft report the manager said:

I believe it [the inspection by the consultant] was immaterial.

The dismissal of CEO Mr Stephens' son-in-law

182. Between August and December 2011 the GRV Board terminated several stewards for breaching GRV betting policies. One of the stewards is Mr Stephen's son-in-law.

183. The son-in-law filed an unfair dismissal claim with Fair Work Australia and the matter was discontinued in January 2012 upon agreement being reached with GRV and the payment to the son-in-law of a termination payment of \$17,920.

184. My investigation identified that Mr Stephens provided advice to his daughter who was negotiating the terms of her husband's termination with GRV in an email dated 16 January 2012 (see Appendix 2 to this report). The advice included the CEO's view about how any claim for compensation by his son-in-law to GRV should be framed. For example, the CEO gave advice on:
- the rate of pay his son-in-law should be paid by GRV
 - the wording to use in any request to GRV
 - information provided to him by GRV's Industry's Finance Manager
 - the 'current thinking' of the Board in relation to limitations on terminated employees when applying for future advertised vacancies
 - the framing of the son-in-law's claim to GRV in relation to the time period to reapply for future positions.
185. At interview on 2 April 2012, Mr Stephens said the termination matter was handled by GRV's Chairman of the Integrity Sub-Committee and the Integrity Manager. Mr Stephens said that the handling of the matter was correct in that he (Mr Stephens) should not have been involved, and he had tried to remain as impartial as possible. In relation to the advice provided to his family members via the email, he said:
- I was supplying her I guess with information with my experience in industrial relations, a way these things work ...
- I guess caught between two places as I said before, if she had gone with my final recommendation, she would have gone the whole way or they would have gone the whole way. The way I saw it there were holes in the whole [GRV] argument so severe that ... if ever I have seen a case for reinstatement this would be it.
186. Mr Stephens said that the giving of this information to his daughter and son-in-law was appropriate because 'I'm her father and his father-in-law...'

The matter involving CEO Mr Stephens' daughter

187. In an email dated 12 January 2012, CEO Mr Stephens requested two senior Tabcorp officers, the then Heads of Wagering and Gaming, to consider his daughter for any employment opportunities that may arise within the industry (see Appendix 3 for a copy of the email). While the CEO's email specifies, 'no favours' it could be perceived that he was using his position within the racing industry to obtain an employment opportunity for his daughter.
188. At interview on 2 April 2012, Mr Stephens said that he could not recall if he was requested by his daughter to send the January 2012 email or if he sent it of his own accord. He said that he sent it to the senior managers as:
- There is going to be a lot of reconstruction at Tabcorp, if they're looking for people it's very very hard to get people with experience in the industry and qualifications and if you're looking for people, she's out there.

189. Mr Stephens was asked if it was appropriate that he had sent the email regarding his daughter to people within the racing industry. He said that he did not see it as someone using their power to gain a benefit for a family member and that 'people should know him better than that'. He also said:

... I think it's something that I'd do probably for anyone to indicate that where there are people who seem to be suitably qualified ... I don't expect any favours I wouldn't expect anything ... what happens in this industry at times is that it is very very difficult to get people and you don't know who's available.

190. Mr Stephens said that nothing eventuated from his approach to Tabcorp on behalf of his daughter.

191. Mr Stephens said that his email to the senior Tabcorp officers specifies 'no favours' on three separate occasions.

Conclusions

192. I consider the actions and conduct of GRV's CEO in:

- failing to avoid conflicts of interest when he obtained the assistance of GRV's contractor for private gain
- providing advice to his daughter in relation to his son-in-law's employment claims against GRV
- using his position as the GRV CEO in seeking to gain a private benefit for his daughter with Tabcorp officers

to be in breach of the *Code of Conduct for Victorian Public Sector Employees*. It was clear at interview that the CEO did not understand the nature of what constituted a conflict of interest nor how his actions and those of his staff could be construed as a conflict and therefore inappropriate.

193. I note that a Compliance Manager had commenced with GRV in March 2012, to assist in its management of financial and other statutory compliance responsibilities and risks within GRV and the greyhound racing industry. While this is a positive step, I am concerned that GRV did not previously have in place mechanisms to assess and monitor organisational compliance with the code of conduct and governance issues.

194. Given the nature and extent of the issues noted by my investigation, I consider GRV's governance and management framework needs to ensure staff are aware and have an understanding of real and perceived conflicts of interest and, the need to identify and manage them.

195. Mr Stephens resigned as GRV's CEO on 19 April 2012.

Recommendations

I recommend that:

Recommendation 12

GRV staff be trained in how to identify and deal appropriately with conflicts of interest.

Recommendation 13

GRV commission a comprehensive audit of its governance and management framework.

Gifts and hospitality

196. The risks associated with public sector employees accepting gifts and hospitality are outlined in several guides and reports including:
- the *Code of Conduct for Victorian Public Sector Employees*.
 - my *Conflict of interest in the public sector* report March 2008 report.¹²
 - the Public Sector Standards Commissioner's *Gifts, Benefits and Hospitality Policy Framework*, March 2010.
197. Key messages outlined in these guides and reports include that public sector employees should:
- not solicit gifts, benefits or hospitality
 - refuse all offers of gifts, benefits or hospitality that could be reasonably perceived as undermining the integrity and impartiality of their organisation or themselves
 - refuse all offers of gifts, benefits or hospitality from people or organisations about whom they are likely to be making decisions involving tender processes and procurement.
198. My investigation reviewed GRV's gifts register which contains entries from September 2005 until August 2011. From August 2011, the register was no longer used and instead, staff record the acceptance of gifts and hospitality on individual *Gifts Declaration* forms.
199. GRV's Gifts and Hospitality policy states:
- The general principle to be followed is that staff members should not seek or accept favours or gifts from anyone who could benefit by influencing them.
200. The policy also states that the receipt of such should also be in accordance with the Code of Conduct for Victorian Public Sector Employees.
201. My investigation found that GRV staff including senior managers routinely are offered and accept gifts and hospitality. In the 2011 calendar year, the register and declaration forms recorded 17 instances of staff acceptances of gifts or hospitality.

¹² Victorian Ombudsman, *Conflict of interest in the public sector*, Melbourne, March 2008.

Inadequate policy

202. Mr Stephens said that he often received offers of gifts and hospitality over the phone from various parties including industry associates or contractors. This included tickets to the football. He said that where he does not accept the offer, he does not enter the offer in the GRV register. He said:

A day at the footy is nothing to me ... if anyone thinks inviting me to the footy is going to influence you ... it's a bit of a nothing as far as I'm concerned.

...

... you get known - your reputation over a number of years. People say, "Do you want to go to the footy? Do you want to go to that?" Normally, ... probably the majority would be Tabcorp, and they're normally where the three CEOs or the three codes are all invited at once.

...

If someone rings up and says, "Do you want to go to the footy this week?", and I say, "No, I'm busy" and I put down the phone and get on with work, I don't record it. And that is nine times out of 10.

203. Mr Stephens said that he would also not expect his staff to record offers of hospitality if they had received them over the phone however, 'maybe that was something that we [GRV] should do'.

204. Mr Stephens said that GRV's policy was reviewed 'around six months ago' and required staff to declare gifts and hospitality in excess of \$100 in value and that he confirmed that GRV does not have 'ABCD documentation'. GRV's documented policy does not specify any dollar value of gifts and hospitality that must be declared. Instead, the policy states, 'Employees are able to accept token gifts in the nature of souvenirs, mementos or symbolic items of low material value, if approved by the CEO or respective SMT [senior management team]'.

Acceptance by GRV staff

205. Examples of the gifts and hospitality accepted by GRV staff (including the CEO and Board Members) and the reasons recorded by staff for the offer, are set out below.

Table 2 - Gifts and hospitality accepted by GRV staff and reason recorded

Gift accepted	Recorded reason for gift
Tickets: - Australian Open tennis - President's golf event (\$500 value) - AFL football (\$100 value) - Grand final breakfast (\$100 value)	- Nil reason recorded. - Staff member has interest in event and networking opportunity - Staff member is a former player - GRV are a client
Luncheons (\$150)	GRV a client, business partner
Alcohol (\$100 value)	Ongoing work relationship
Chocolates (\$100, \$40, \$35 value)	Christmas gift
\$50 betting voucher for an AFL match \$50 betting voucher for the Sydney to Hobart Yacht race	Christmas gift Christmas gift
Accommodation upgrades at Star City courtesy of Tabcorp - 3 rooms	'Final cheque payment'
3 pens at \$400 each	Signing of partnership agreement

Source: GRV Gift Register and Declaration Forms.

206. The gifts accepted by GRV staff involved in purchasing were frequently offered by GRV contractors including Tabcorp and Sky Channel. Mr Stephens was asked why contractors and suppliers offered gifts and hospitality to GRV staff. He said:

You would have to ask them [the suppliers]. I think the people that offer me to go to the football ... we've got a box of 10 people ... we haven't got anyone to fill it, do you wanna [sic] go.

...

Q: Do people who offer hospitality expect something in return?

A: I would certainly hope not ... if people are expecting something from me because of that, they're sadly mistaken.

207. An email sent by the CEO's Executive Assistant to the senior management team in October 2009 outlined the significance of the relationship between GRV and Tabcorp/SKY:

Just a reminder that if you are attending events over the spring carnival as a guest of Tabcorp/SKY, it will need to be recorded in the gift registry which is located in my office. Given the relicensing process, it is extremely important to record these events ...

208. This email does not reflect the obligation on GRV to consider the appropriateness of acceptance and attendance at such events during the licensing period. In relation to the relationship between Tabcorp and GRV, Mr Stephens said:

[The email] is probably in the period of when the licence ... there was lots of probity issues with respect to the licence and I probably said to him just remind everyone that if they're going to accept one of these things ... it's not allowed to be seen in any possible way as affecting the licence ...

...

Q: Can you see that with the probity and sensitivity of the re-licensing process, just recording the event may not be enough? Maybe the 'going' to the event may be an issue?

A: I think what we've tried to do is instil a culture of recording ... if you don't have a culture of recording then people won't record anything. At least you're saying, this is what occurred. ...

If people have been going for five years in a row [to Tabcorp events] and then we're in a position where there is delicacy about the licence and then nobody goes, does that send a message to the market.

209. The following further issues were identified during my investigation:

- Several staff confirmed that they had received Christmas gifts such as movie tickets each year from a particular contractor and were aware of the requirement to declare them, but had not done so.
- The relevant officer who has received the gift or hospitality makes an entry on the declaration form declaring that they have accepted the gift or hospitality. Despite the wording of the policy, there is no assessment made of the appropriateness or otherwise of accepting the gift or hospitality. The decision-making process was confirmed by the CEO at interview on 2 April 2012.

- There were no declined gifts and hospitality recorded in the register.
- Although the Declaration Form provides for a 'decision' to be completed as to whether the gift should be accepted or declined, this area of the form was not completed.

Conclusions

210. The receipt of gifts and hospitality by public officers has the potential to influence decisions and create conflicts of interest. The acceptance of gifts could compromise, or be seen to compromise, the employee's impartiality in the performance of their duty.
211. GRV's policy in this area is inadequate in terms of providing guidance to staff on their obligations to declare, record and decline offers of gifts and hospitality. The policy is general in nature and makes no reference to the obligation on staff to:
- record all offers or the process for doing so
 - obtain approval for accepting the offer
 - identify the relevant officer/s involved in the assessment and approval process.
212. Further, particular examples are not outlined to illustrate for the benefit of staff instances where it is not appropriate to accept gifts other than during a tender process.
213. My investigation identified that GRV staff have demonstrated little understanding as to how the acceptance of gifts and hospitality may be perceived and have not questioned the basis for private entities offering gifts and hospitality.
214. While GRV has processes and policies to deal with gifts and hospitality, they are inadequate. There has not been enough critical thought given as to whether gifts should be accepted at all, the policies are inadequate and staff have not complied with them.
215. In recent years I have conducted several investigations highlighting issues around the acceptance of gifts by public officers. In many instances I found that the acceptance of gifts has the propensity to influence decisions and create conflicts.¹³

Recommendations

I recommend that GRV:

Recommendation 14

Revise its gifts and hospitality policy to ensure that it includes a requirement for all staff to declare in writing, offers of gifts, benefits and hospitality as well as those received.

¹³ See for example: *Investigation into the Foodbowl Modernisation Project and related matters*, November 2011; *Corrupt conduct by public officers in procurement*, June 2011; *Own motion investigation into the tendering and contracting of information and technology services within Victoria Police*, November 2009.

Recommendation 15

Ensure that only offers of gifts and hospitality which comply with the policy, are accepted.

Recommendation 16

Take appropriate action to ensure that staff are aware of their responsibility to declare gifts and hospitality.

Hospitality expenses

216. I reviewed expenditure incurred by GRV staff during 2011 using the GRV corporate credit card to assess whether it was appropriate, reasonable and had been incurred in line with relevant policies and procedures.
217. In determining the appropriateness of expenditure I assessed whether the expenditure was incurred in order to meet a 'business need' as required by the Financial Management Act. That is, whether the expenditure incurred could reasonably be associated with the conduct of that person's official duties. Expenditure that benefited the individual without meeting a business need could be considered to be inappropriate.
218. My review of payments disclosed the following types of expenditure which I consider was inappropriate and delivered private benefits:
- GRV expenditure on alcohol was routinely incurred whilst dining in 2011 by the CEO, staff and [former] chairman. For example, dinners attended by both the CEO and GRV's Chairman and paid for on GRV's credit card included the purchase of alcohol totalling \$86, \$59.50; and \$32. Two dinners attended by GRV staff included the consumption of alcohol to the value of \$124.50 and \$86.
 - Tips were paid to various venues. For example, tips of \$50 and \$25.50 were paid to a venue following lunch and dinners by staff, the Board and Senior Management Team in 2011.

Conclusion

219. I do not consider that the purchase of alcohol by GRV staff for consumption at staff meetings and other functions or the payment of gratuities, is a reasonable or 'essential' business expense that should be borne by government agencies.

Recommendation

Recommendation 17

I recommend that GRV review its hospitality policies and procedures to ensure that costs are only incurred for reasonable, business-related expenditure.

Staff use of the email system

220. GRV's *E-mail policy*, last updated as at 20 May 2011, specifies that the mail system is to:

... assist you in the performance of your job, you should use it for official GRV business only. Incidental and occasional personal use of email is permitted by GRV, but these messages will be treated the same as other messages. You must not use the GRV email system for receipt of personal messages that contain file attachments. This will be considered a breach of the conditions of this policy.

221. The policy also specifies:

Forbidden Content of E-Mail Communications: You may not use GRV email systems in any way that may be seen as defamatory, insulting, disruptive or offensive by other persons, or harmful to morale. Examples of forbidden transmissions include sexually explicit messages, ... jokes; ...or any other message that can be construed to be harassment or disparagement of others ...

222. The policy further states that it is misconduct to use the email system to send or receive offensive or indecent materials. Although GRV's policy provides for 'periodic unannounced inspections' my investigation established that systematic monitoring of GRV staff email usage and compliance with the E-mail policy, had not occurred at all.

223. During my investigation my officers reviewed GRV email records of eight employees, comprising around 10 per cent of GRV's total staff. The review identified inappropriate use of the email system by three of the eight staff reviewed. This included email messages and attachments including photographs and powerpoint presentations containing obscene, offensive, pornographic, indecent and discriminatory images, jokes and words.

224. Most of the email messages and attachments were received by staff from external parties however, some staff then distributed these emails and attachments to other GRV staff members as well as external parties. While some of the emails were deleted, others were retained in the staff member's inbox for months and sometimes years.

225. My investigation did not identify instances of GRV staff requesting those sending inappropriate emails, to cease.

226. For example, a senior manager was the recipient of a number of obscene, pornographic and sexually explicit emails. In 2011, the senior manager had also received a First and Final Warning for breaching GRV betting policy.

227. My investigation also identified some internal emails which contained derogatory comments about the performance of certain GRV staff that were sent to external parties.

228. My investigation also confirmed that GRV staff have unfettered access to the internet from their work computers, including gambling sites. When asked at interview whether access to such sites should be prohibited, the Chair Mr Peter Caillard said:

I have problems with staff betting but not accessing the sites for a few reasons. ... I access blogs, I go and have a look at the blogs to see what's written about us and what's happening ... you may look at odds. When we go to dinners for example with the clubs, John Stephens [GRV CEO] is very knowledgeable about greyhounds and needs to be, including who's favourite and whatever else. He can't bet but its useful, they need to understand the product ... our product is betting, I mean the only reason we have greyhound racing is to bet. So I have no problems with them accessing betting sites, I wouldn't ban it. ...

...

So betting sites, I wouldn't ban it only because of the nature of the business, they need to understand betting and know what's going on ...

229. I consider that only those staff with a clear business need to view such sites should have that access. The failure to limit access to betting websites for certain staff is inconsistent with the spirit of GRV's policy to prohibit staff betting during work hours.
230. Mr Dooley, former Manager of Infrastructure and Clubs, told my officers at interview on 13 April 2012 that the level of GRV staff who would have a business need for accessing gambling sites for their work, would be 'in the minority'.

Actions taken by GRV's Board to improve corporate governance

231. In response to my draft report, the Chairman outlined the following initiatives which had been implemented to improve GRV's corporate governance:
- the use of 'spymaster' software which generates bi-monthly reports to all GRV managers in relation to websites visited by employees, including the time spent on those websites.
 - the declaration form and the policy acknowledgement form – as well as the declaration of interest declaring greyhounds owned and betting accounts – signed by all staff on an annual basis as a component of the appraisal process.
 - the introduction in March 2012 of a compliance program – prepared and overseen by [a legal firm] – which not only includes a review of existing policies but specifically includes an assessment of the extent to which the policies are currently being followed.
 - the commencement with GRV of a Compliance and Risk Manager on 6 March 2012.
 - the ISC resolution on 9 February [2012] which formalises the conduct of annual betting activity audits.
 - the creation of an Integrity Sub-Committee.
 - the reports given to the Racing Integrity Commissioner and the investigations undertaken by our team ... in areas such as breach of betting policies.

232. However I note that the use of the 'spymaster' software which was implemented around four years ago, and the annual declaration process by staff both appear to have not been effective in ensuring staff compliance with GRV policies given the issues outlined in my report. Some senior GRV staff told my officers that they were not aware of any action taken by GRV on the information submitted by staff on the staff declaration forms.
233. In addition, the investigations undertaken by the GRV in relation to the breach of its betting policies were, at the request of the Racing Integrity Commissioner and not initiated by GRV.
234. As other initiatives were implemented during my investigation, their effectiveness has not yet been assessed.

Conclusion

235. It is important that the initiatives implemented by GRV achieve their purpose and that GRV periodically monitor compliance to ensure sound governance. A failure to do so may lead to staff regulating their own behaviour and this would not be appropriate.

Recommendations

I recommend that GRV:

Recommendation 18

Investigate staff email usage over the past 12 months to:

- identify non-compliances with GRV policy
- identify areas where GRV policy and procedures could be improved including raising awareness of policies
- take appropriate action against officers in breach of the GRV policy
- report back to my office regarding the investigation's outcomes within three months of the date of this report.

Recommendation 19

Limit access to internet gambling and betting websites to those staff with a genuine business need. Such approvals should be documented. GRV's policy in relation to limiting staff access to websites should also be documented and communicated to staff.

Summary of recommendations

I recommend that:

Recommendation 1

GRV implement a policy to prohibit the ownership of greyhounds by all staff employed by GRV.

Recommendation 2

The Racing Integrity Commissioner review the conclusions and recommendations within this report with a view to assessing the applicability to the other racing codes in Victoria.

Recommendation 3

GRV take into consideration any disciplinary or performance issues when it is considering awarding staff salary increases and/or bonus payments.

Recommendation 4

The Minister for Racing consider whether there is a need to further strengthen GRV's Board to ensure that GRV can meet the future challenges of the greyhound racing industry.

Recommendation 5

GRV review its tendering procedures and practices within three months to ensure that they comply with relevant legislative and government procurement guidelines and the Victorian Auditor-General's Procurement good practice guide.

Recommendation 6

GRV ensure that deviations from standard tender processes are recorded and appropriately authorised by the Minister.

Recommendation 7

GRV ensure that staff involved in the procurement of goods and services and works associated with public construction have an appropriate level of knowledge and training in procurement policies, practices and procedures.

Recommendation 8

GRV take a more active role in the management and oversight of its capital works projects, consultants and contractors and ensures that tender processes and contracts are managed in accordance with legislation and government guidelines.

Recommendation 9

GRV ensure that all relevant records are retrieved from its contractors at the conclusion of each works project and that they are filed and maintained in accordance with the requirements of the *Public Records Act 1973*.

Recommendation 10

The Office of Racing and Gaming review its grant application forms and assessment guidelines to ensure that agencies seeking funding comply with relevant legislative and procedural requirements in relation to procuring goods and services and construction management.

Recommendation 11

The Office of Racing and Gaming review its grant application forms and assessment guidelines to ensure agencies provide with their funding applications, appropriately detailed submissions in response to grant guidelines, including required supporting documentation prior to the approval of grant funds.

Recommendation 12

GRV staff be trained in how to identify and deal appropriately with conflicts of interest.

Recommendation 13

GRV commission a comprehensive audit of its governance and management framework.

Recommendation 14

GRV revise its gifts and hospitality policy to ensure that it includes a requirement for all staff to declare in writing, offers of gifts, benefits and hospitality as well as those received.

Recommendation 15

GRV ensure that only offers of gifts and hospitality which comply with the policy, are accepted.

Recommendation 16

GRV take appropriate action to ensure that staff are aware of their responsibility to declare gifts and hospitality.

Recommendation 17

GRV review its hospitality policies and procedures to ensure that costs are only incurred for reasonable, business-related expenditure.

Recommendation 18

GRV investigate staff email usage over the past 12 months to:

- identify non-compliances with GRV policy
- identify areas where GRV policy and procedures could be improved including raising awareness of policies
- take appropriate action against officers in breach of the GRV policy
- report back to my office regarding the investigation's outcomes within three months of the date of this report.

Recommendation 19

GRV limit access to internet gambling and betting websites to those staff with a genuine business need. Such approvals should be documented. GRV's policy in relation to limiting staff access to websites should also be documented and communicated to staff.

Appendix 1 – continued

Ministerial Directions / <i>Project Development and Construction Management Act 1994</i>	GRV	Comparison
Ministerial Direction No. 1 Tendering Provisions for Public Construction	Tendering procedures, GRV May 2010 memorandum	
<p>i. tenders must be sought from at least three pre-qualified contractors; or</p> <p>ii. tenders must be sought by public advertisement,</p> <p>unless, in regard to sections 1a) to 1c), the relevant Minister or Accountable Officer certifies in writing that any of the special circumstances ... apply, in which case the relevant Minister or Accountable Officer shall determine the procedure to be used.</p>		

Appendix 2 – CEO's email re his son-in-law

RE: RE: FWA Application

From: John Stephens </o=grv/ou=grv002/cn=recipients/cn=jstephens">
To: [REDACTED]
Date: Mon, 16 Jan 2012 14:06:14 +1100

[REDACTED]
I think point one is reasonable (but not sure how it sits with IR laws)? In other words, it is worth a try along the lines of:

(a) this [quote a figure] is what [REDACTED] would have received [based on weekly average say over the past 6 months] and
(b) therefore we think it is fair that he be 'paid' at his normal rate.

I think it unlikely that any allowance would come from car and phone as they are based on 'reasonable' external use - essentially they are job related.

But as I say, I think [REDACTED] told me that termination payments including LSL relate to base wage only -- ask for a reference to that matter?

In regards point two, I would not cite any term -- simply be able to reapply for advertised vacancies without limitations. I say this because I think the current thinking may change (even at the next Board meeting) but you never know.

Tuesday looking good, Mum has [REDACTED] though and we are looking at hld pick up time

Love you both as well as [REDACTED] and [REDACTED]

DAD

From: [REDACTED]
Sent: Monday, 16 January 2012 1:24 PM
To: John Stephens
Subject: Fwd: RE: FWA Application

This is where we are at... Two points I think we should request.

1. Weekly wage should be based on an average of wage received considering meal allowances, overnights, penalty rates etc. In addition to total package being inclusive of car and phone.
2. Time period to reapply reduced to 6 months considering the reasons behind the termination and one mistake in nine years of service.

What do you think?

[REDACTED]

Appendix 3 – CEO’s email to Tabcorp managers

No favours just a consideration?

From: John Stephens </o=grv/ou=grv002/cn=redplents/cn=jstephens">

To: [REDACTED]

Date: Thu, 12 Jan 2012 11:06:55 +1100

Gentlemen,

All the very best for 2012 prior to the start of the new licence – amid all of its quite complex potential and exciting and demanding intersecting disciplines for Tabcorp. In this context, this communication is really about my daughter’s aspirations – with no favours expected, just a consideration.

[REDACTED] is 30 in April. Happily married she delivered our second grandchild, [REDACTED] last July.

As such she is full employed with the Department of Human Services as PA to the regional Director in Bendigo where she is required to produce Regional and Ministerial briefs etc. She returns from maternity leave at the end of January. But in a recent holiday she expressed the desire for bigger things – she is just about as driven as the old man.

By way of background, [REDACTED] has been in ‘gambling’ industries – for all of her life. She has managed greyhound clubs at Bendigo and Shepparton, worked in Marketing roles here and the VRC. Both grand fathers were at some stage book makers. She knows about racing, betting, Tabcorp, Clubs all of the codes.

She has also recently (October 2011) graduated with her Masters in Management (marketing) from Monash completing it P/T while working F/T. She also completed her undergraduate degree there.

What I have said to her is that a real difficulty in ‘our’ businesses is obtaining both the ‘industry smarts’ and the theoretical competence required of certain jobs.

Thus my view is that there may be opportunities coming up in Keno, Agency expansions, TGS etc where this ‘interconnection’ would be a bonus?

Totally unbiased of course, she reminds me of a (with respect) younger [REDACTED] back in the fledgling days of Tabcorp Gaming – plenty of ability, a desire to go places and do things. She is not about filling in, she is about becoming a senior team player.

If any of this ‘rings a bell’ then she can forward her CV.

I therefore ask no favours – just consideration

I am sure that she would readily relocate to the city, but I am not sure that Grandma would let her move interstate with [REDACTED]???

Cheers

John Stephens
CEO



T [REDACTED]
P [REDACTED]
E [REDACTED]

A 46-50 Chelwynd Street, West Melbourne, VICTORIA 3003

Ombudsman's Reports 2004-12

2012

The death of Mr Carl Williams at HM Barwon Prison – investigation into Corrections Victoria
April 2012

Whistleblowers Protection Act 2001 Conflict of interest, poor governance and bullying at the City of Glen Eira Council
March 2012

Investigation into the storage and management of ward records by the Department of Human Services
March 2012

2011

Investigation into the Foodbowl Modernisation Project and related matters
November 2011

Investigation into ICT-enabled projects
November 2011

Investigation into how universities deal with international students
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)
October 2011

Investigation into the Office of Police Integrity's handling of a complaint
October 2011

SafeStreets Documents - Investigations into Victoria Police's Handling of Freedom of Information request
September 2011

Investigation into prisoner access to health care
August 2011

Investigation into an allegation about Victoria Police crime statistics
June 2011

Corrupt conduct by public officers in procurement
June 2011

Investigation into record keeping failures by WorkSafe agents
May 2011

Whistleblowers Protection Act 2001 Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee
May 2011

Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff
March 2011

The Brotherhood – Risks associated with secretive organisations
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011

Whistleblowers Protection Act 2001 Investigation into the failure of agencies to manage registered sex offenders
February 2011

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2010

Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman's recommendations second report on their implementation
October 2010

Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct
October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
June 2010

Own motion investigation into Child Protection – out of home care
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman's recommendations – Report on their implementation
February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009

Brookland Greens Estate – Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
August 2009

An investigation into the Transport Accident
Commission's and the Victorian WorkCover Authority's
administrative processes for medical practitioner
billing
July 2009

Whistleblowers Protection Act 2001 Conflict of
interest and abuse of power by a building inspector at
Brimbank City Council
June 2009

Whistleblowers Protection Act 2001 Investigation
into the alleged improper conduct of councillors at
Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool
Shire Council
April 2009

Crime statistics and police numbers
March 2009

2008

Whistleblowers Protection Act 2001 Report of an
investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the
procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and
related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

2007

Investigation into VicRoads' driver licensing
arrangements
December 2007

Investigation into the disclosure of electronic
communications addressed to the Member for Evelyn
and related matters
November 2007

Investigation into the use of excessive force at the
Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's tender
process for the cleaning and gardening maintenance
contract – CNG 2007
October 2007

Investigation into a disclosure about WorkSafe's and
Victoria Police's handling of a bullying and harassment
complaint
April 2007

Own motion investigation into the policies and
procedures of the planning department at the City of
Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the Freedom of Information Act 1982
June 2006

Investigation into parking infringement notices issued
by Melbourne City Council
April 2006

Improving responses to allegations involving sexual
assault
March 2006

2005

Investigation into the handling, storage and transfer of
prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's
guidelines
October 2005

Own motion investigation into VicRoads registration
practices
June 2005

Complaint handling guide for the Victorian Public
Sector 2005
May 2005

Review of the Freedom of Information Act 1982
Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the
administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual
abuse allegations
February 2005

2004

Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of
Victoria
December 2004

Ceja task force drug related corruption – second
interim report of Ombudsman Victoria
June 2004