12 September 2025

**DECISION**

**MEDIA APPLICATION**

**RACING VICTORIA**

**and**

**DARREN WEIR**

**Date of hearing:** 28 August 2025

**Date of decision:** 5 September 2025

**Panel:** Magistrate Peter Reardon (Chairperson).

**Appearances:** Mr Sam White appeared on behalf of Nine Publishing.

Ms Sophie Meixner appeared on behalf of The Herald Sun.

Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Matthew Stirling appeared on behalf of Mr Darren Weir.

**DECISION: MEDIA APPLICATION – ACCESS TO CCTV FOOTAGE**

1. This is an application by Nine Entertainment Co. (“Nine”), owner of The Age newspaper and Newscorp, owner of The Herald Sun, to access the CCTV video footage played during the hearing of *Racing Victoria v Darren Weir*.
2. The application is opposed by Mr Darren Weir on the principle of finality and collateral attack. In addition, an earlier hearing of Mr Weir’s matters heard in the Magistrates’ Court of Victoria (“MCV”) to access the CCTV footage was refused by the presiding Magistrate. There are other grounds for dismissal made by Mr Matthew Stirling, appearing on behalf of Mr Weir, at this hearing however, the above are the major objections.
3. Mr Marwan El-Asmar, appearing on behalf of Racing Victoria (“RV”), expressed neither consent nor opposition to the application.
4. At the outset, the Tribunal states that, pursuant to section 50Q(1)(j) of the *Racing Act* 1958, it adopts the principles of open justice, as articulated in the *Open Courts Act* 2013 (“the Act”), for the purpose of determining whether the application brought by Nine and The Herald Sun ought to be granted.
5. This application was originally made to the Tribunal on 11 August 2025 by The Herald Sun for the release of the footage that was played to the Tribunal in June 2024 where charges were heard against Mr Weir before this Tribunal.
6. The charges brought against Mr Weir were heard by Chairperson, Judge John Bowman, and two Tribunal members. His Honour, John Bowman, has since retired as Chairperson of the Tribunal. This application is now to be heard by myself, who previously had no involvement in this matter.
7. In May 2024, The Herald Sun applied for access and were informed by the Tribunal that the footage would not be released until the matter had been finalised.
8. In June 2024, the Tribunal reserved its decision in the Tribunal proceedings. On 4 June 2024, the Tribunal emailed the media and informed them that the Tribunal would not consider any applications for the release of the footage until at least four weeks after the final decision in the proceeding was handed down.
9. On 2 September 2024, the Tribunal handed down its decision in the matter and in October 2024, Mr Weir appealed the decision of the Tribunal to the Supreme Court of Victoria (“SCV”) by way of review.
10. On 29 June 2025, the SCV dismissed the proceedings before it.
11. Upon receipt of the application for access to the CCTV footage, the Tribunal wrote to the respective parties about whether they opposed or consented to the application to release the footage. If opposed, parties were to provide written submissions. Mr Stirling opposed this release and provided the Tribunal with submissions. In response, the media organisations provided submissions for the release of the footage.
12. Mr Stirling submits that the media have only now made an application for access after knowing the result and disqualification of Mr Weir since 2 September 2024, almost one year after the result. He contends that the media have remained silent for that period of time and have only now have attempted to revive it for sensational reasons rather than for any public interest. In his written submissions, Mr Stirling makes no reference to the proceedings conducted post the decision of the Tribunal in September 2024. When the SCV proceedings were raised with Mr Stirling, questioning why they had not been referenced or were omitted from his submissions, he responded that he had no involvement in those proceedings and that the SCV hearing was a review only, therefore, irrelevant to this application.
13. Mr Sam White, on behalf of the Nine, and Ms Sophie Meixner, of behalf of The Herald Sun, both submitted the chronology as outlined above was the reason for any delay as the matter was finalised on 29 June 2025. Further, the Tribunal had informed them that they were required to wait until at least four weeks from the finalisation date before applying to the Tribunal for access to the CCTV footage.
14. The parties may have different opinions about the time of the finalisation of the matter. To be generous to Mr Stirling, he may have construed that the hearing was finalised back in September 2024. However, the Tribunal considers that the submission made on behalf of the media is the correct interpretation, and that there was no inordinate delay in applying for access.
15. In his submissions, Mr Stirling submits police charges were heard at the MCV in Warrnambool on 14 December 2022, whereby Mr Weir pleaded guilty to what can be described as animal cruelty charges. It is noted that Mr Stirling takes issue with that description. The MCV matter was heard in open court. Journalists were amongst the audience due to it being a high profile case, and the CCTV footage was played in Court. Mr Weir was sentenced on that day by the presiding Magistrate.
16. A journalist at the end of the hearing applied for access to the CCTV footage. The defence Counsel for Mr Weir opposed the release of the CCTV footage, and the presiding Magistrate dismissed the application for access. There were never any suppression applications made by any party throughout the MCV proceedings, and there is no transcript or recording available. Therefore, the Tribunal will not speculate as to the reasons why access was denied to media organisations.
17. In the hearing before this Tribunal when Mr Weir faced charges brought by RV under the Rules of racing, the matter was open to the public. There were no applications made to suppress any material. The CCTV footage was played in open Court where members of the public and media were present.
18. Mr Stirling, in his written submissions, states that this Tribunal is bound by the Warrnambool MCV Ruling in 2022 to not grant the release of the CCTV footage. He contends that the failure to review the MCV decision to not release the CCTV footage means that the decision is binding on this Tribunal.
19. He further submits the finality Rule applies to the MCV Ruling in December 2022. In particular, he refers to the judgment of Nettle JA (as he then was) in *Kabourakis v The Medical Practitioners Board* (2006) VSCA 301 at paragraph 47-48 in which His Honour stated the following:

“Statutory Tribunals cannot revisit its own decisions simply because it changed its mind or recognises that it has made an error within jurisdiction”.

He submits that for the good administration of justice, finality is the paramount consideration.

1. Mr Stirling further submits that the principle of finality was discussed by the Honourable AM Gleeson AC QC when delivering the Maurice Byers Lecture on 10 April 2013. This was reported in the Winter Edition of the Victorian Bar News of the same year. In that report, the principle states that the underlying public interest is served by there being a finality in litigation and a party should not be vexed twice in the same matter. This principle extends beyond res judicata, issue estoppel and abuse of process.
2. The Tribunal takes no issue with that principle, however, finds this submission does not apply in this matter. Criminal proceedings conducted in the MCV are separate and distinct from a hearing conducted at the VRT, although the offences arise out of the same circumstances or instances of alleged animal cruelty. The matters are different charges requiring different standards of proof in different jurisdictions. The matters before the Tribunal were not a continuation, re-opening, appeal or review of the criminal matters and are not a litigation of the same matters. The outcomes of the separate hearings do not require the same outcome, and each hearing has no bearing on the other. One is a criminal hearing and the other before this Tribunal is a hearing of breaches under the Rules of racing.
3. The media application for access in the MCV heard in December 2022 was simply a request for access which was denied by the Magistrate. There were no applications made by any party during the MCV hearing for suppression or otherwise. The Magistrate simply refused access without any time limits or any other conditions.
4. The Tribunal, when hearing this case, left open the question of applications after the final decision had been made. There had been no suppression applications or orders made during the hearing. The case proceeded in open Court without any applications or interim Rulings being considered or made. This application is now being made at the conclusion of all proceedings against Mr Weir.
5. The finality Rule authorities relied upon relate to the parties to the actions whether criminal or civil. The media are clearly not parties to any of Mr Weir’s matters and are not involved in the litigation process. The role of the media is to observe and report on matters they view to be of public interest. There is obviously a commercial interest in the reporting of the matters, but no actual involvement in the litigation process. They are the eyes and ears of the public. The result of any case either way does not affect them. In other words, they have no dog in this fight. They have no role to play in the litigation process and no right to re-litigate, revisit, appeal or review the matter. They may express a view in their reporting, but that is the extent of it.
6. It is doubtful that the finality Rule could apply to a non-litigant. Their request is access to an exhibit played and tendered in open Court. The application has no bearing on the litigation process, nor can it affect the outcome of any proceedings. Routinely, Courts have to revisit applications for access to tendered statements and exhibits depending on what stage proceedings are at.
7. Therefore, the Tribunal rejects the submission that the finality Rule means that the Magistrate refusal to grant access to the CCTV footage is binding on this Tribunal. In any event, this is not a case of self-correcting a jurisdictional error, nor a re-opening or re-visiting of a decision by this Tribunal.
8. Mr Stirling further raised the doctrine of collateral damage. It is difficult to see how it is applicable here as the Tribunal is not questioning the decision of the Magistrate. It is only Ruling on the media access to CCTV footage and exhibits tendered in evidence in a different hearing in a different jurisdiction.
9. The Tribunal recognises that open justice is a fundamental aspect of the Victorian legal system. In adopting the principles of the Act for the purpose of determining this application, the Tribunal has had regard to the primacy of open justice, consistent with section 4 of the Act. In particular, the Tribunal acknowledges that the media, through its reporting, has a legitimate interest in proceedings to enable the preparation of fair and accurate reports, and has taken this into account in exercising its discretion in relation to the application.
10. The role of media attendance and reporting is an important one. See: *John Fairfax Publications Pty Ltd and Another v District Court of New South Wales and Others* (2004) 61 NSWLR 344.
11. The CCTV footage that was played in open Court was relied upon heavily in the *Racing Victoria v Darren Weir* case. It was open to Mr Stirling, at any stage of the Tribunal hearing, to make an application for a suppression order not to release the CCTV footage due to the poor state of Mr Weir’s health and welfare as result of ongoing Court and Tribunal hearings. It was never done.
12. Providing the public with access to the footage through the media would assist in enabling a full and accurate understanding of the actions taken by Mr Weir regarding the use of “jiggers” on the horses.
13. The principle of open justice and the access to exhibits was considered by Hulme J in *R v O’Grady* (2000) NSWSC 1256 stating the following:

“The practice of the Courts in that they conduct their affairs with limited exceptions in public. It’s my view that it is a logical incident of the practice that documents which became exhibits should be available for scrutiny by the public recognising of course that the extent of the scrutiny cannot be allowed to impose any significant disruption on the efficient operation of the Court system”.

1. Mr Stirling further submits, in support of the non-release of the CCTV footage, the human toll taken on Mr Weir. The Tribunal assumes that this, in itself, is some form of suppression order application, although it also appears couched in the finality submission.
2. In support of this application, no medical or psychological report has been tendered, save for a character reference from a non-medical person named Mr Michael Leonard. Mr Leonard appears to be a chartered accountant and a friend of Mr Weir. Leaving aside his general comments about his worldly experiences, he refers to the fact that the lengthy time that the proceedings have taken have had an adverse effect on Mr Weir’s health and wellbeing.
3. The Tribunal accepts that lengthy judicial proceedings may adversely place a strain on persons involved in litigation. However, Mr Weir was the accused in criminal matters and the Respondent before this Tribunal. He has been found and/or pleaded guilty and sentenced in both jurisdictions. It would be rare that a person in such a position as Mr Weir would be able to succeed in such an application to prevent access to relevant and admissible incriminating evidence, namely an exhibit such as a “jigger” was in this case at the conclusion of proceedings. On the material and submissions for the non-release of the footage, the Tribunal rejects that application.
4. The Tribunal accepts that the principle of open justice should prevail in this matter and that the CCTV footage should be made available to the media.
5. The original footage should remain on the Tribunal files and copies of the footage can be provided to the media organisations who are parties to this application only. No further copies are to be distributed by the Tribunal or by media organisations to other persons or organisations without the approval of the Tribunal.

**AMENDMENTS**

1. The Tribunal determines that the *Open Courts Act* 2013 (“the Act”) does not apply to the Tribunal or to proceedings before it, as the Tribunal is not prescribed as a Court or Tribunal within the meaning of section 3 of the Act. Consequently, parties have no entitlement to bring applications pursuant to that Act.
2. The Tribunal acknowledges that, at the hearing for the delivery of this decision, it incorrectly stated that the Act applied to the Tribunal and that the Tribunal had obligations pursuant to it, when in fact no such obligations arise.
3. Notwithstanding this, the Tribunal considers that section 50Q(1)(j) of the *Racing Act* 1958 confers upon it the discretion to elect whether to adopt any Rules, practices or procedures applicable to Courts. In the exercise of that discretion, the Tribunal may adopt the principles of the Act and permit parties to make applications that would ordinarily be available under the Act.
4. Further, the Tribunal notes that section 50Q(1)(e) of the *Racing Act* 1958 requires it to hold its hearings in public, which may properly be regarded as reflecting the principle of open justice.
5. Accordingly, the Tribunal has made minor post hearing amendments to its decision. While these amendments do not change or affect the ultimate determination of the application, they have been made deliberately to ensure the decision accurately reflects the matters outlined above and upholds the principles of transparency.

Mark Howard

Registrar, Victorian Racing Tribunal