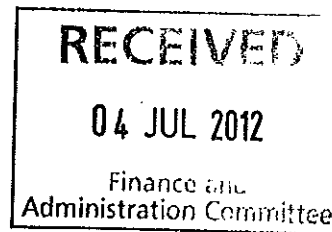


25th June 2012.

Ms. Deborah Jeffrey
The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000



000002

Dear Deborah,

RE: QLD JOCKEY'S WORKERS' COMPENSATION

The Queensland Jockeys Association (QJA) is seeking amendment to the Workers' Compensation and Rehabilitation Act 2003 (the Act).

In consultation with all members of the QJA, it has been agreed by all, that the Act be amended to align the rate of jockeys' weekly compensation with pre-injury average weekly earnings (PIAWE) over the previous 12 months. This would include income from any concurrent employment (Division 2 S.11, Who is a worker, (1) a worker is a person who works under a contract of service.). This would mean they would be deemed employees of Racing Queensland Limited. Another option is adjust the present Racing Queensland Limited Contract of Insurance to include all forms of declared income.

BACKGROUND

Under the Workers' Compensation Act 1990 Jockeys were declared workers, S.8. (1) For the purpose of this Act, a person declared by a provision of this section to be an employer or a worker is an employer, as the case may be, a worker in the circumstances prescribed by the provision, (7) A Jockey riding or driving a horse on a racecourse, or doing on the racecourse anything incident to riding or driving a horse on the racecourse, is a worker employed by the club or association for the time being in occupation of the racecourse.

The Workers' Compensation Amendment Act No.66 of 1994, an Act to amend the Workers' Compensation Act 1990, assented to 1 December 1994.

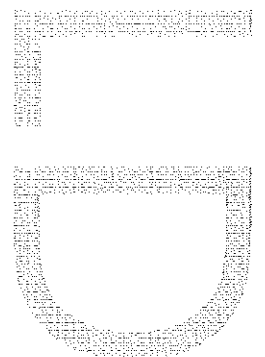
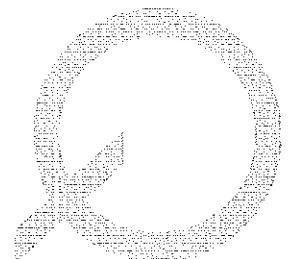
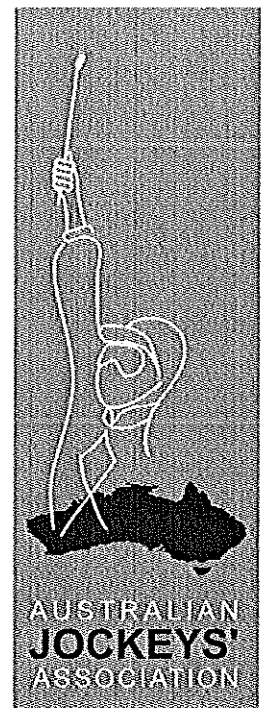
Amendment of s 2.3 (Persons declared not to be workers)

8.(2) Section 2.3(b) a person, other than a person mentioned in **section 2.2(6) [refers to jockeys]**, who, as a professional sportsperson –

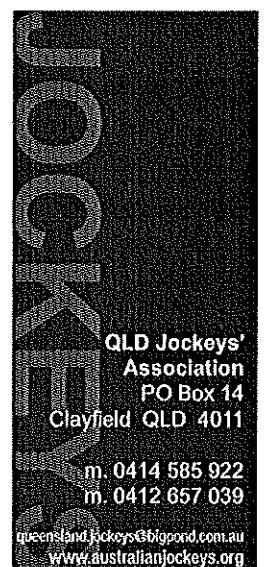
- (i) Participates in a sporting or athletic activity as a contestant; or
- (ii) Is training or preparing for participating in a sporting or athletic activity as a contestant.

In other words Jockeys were still covered.

The WorkCover Queensland Act 1996 changed the definition of a jockey as a worker. He/she was no longer considered a worker, without any



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amendment, the word "Jockey" was no longer documented, instead Jockeys were associated with professional sportspersons, for the sake of Workers Compensation under statutory benefits.

Division 2 – Workers, s.12(3) Also, a person who performs work under a contract of service as a professional sportsperson is not a worker while –

- (a) Participating in a sporting or athletic activity as a contestant; or
- (b) Training or preparing for participation in a sporting or athletic activity as a contestant.

Until 30th June, 1997 Jockeys were specifically included as a worker, due to their specific mention in the legislation.

Jockeys were removed from the definition of a worker with the introduction of the "WorkCover Queensland Act 1996". The definition of a worker at that time was the person had to be a 'PAYE' Taxpayer effective from 1st July, 1997. At the time that was implemented, Racing Queensland's predecessor (Qld Principal Club) took out the current Contract of Insurance to cover the Jockeys. This was effective from 1st July, 1997.

Similarly the WorkCover Queensland Amendment Act No.17 of 1999, Part 2 – Persons who are not workers, (2) A person who performs work under a contract of service as a professional sportsperson.

The worker definition changed again at the end of 2000/early 2001, to the current format, i.e. reference to Schedule 2 of the Workers' Compensation and Rehabilitation Act 2003. The intent of the amendments at the time was to broaden the definition of worker. There was no specific inclusion of Jockeys in the amended legislations from 1996. Jockeys continue to be classed as other persons covered by a contract of insurance.

Under the Workers Compensation and Rehabilitation Act 2003, Part 2 of Schedule 2 of the Act specifically excludes professional sportspersons who are working under a contract of service as workers. Consequently, Racing Queensland considers that Jockeys are not covered under the ordinary provisions of the Act.

Therefore all Jockeys, visiting Jockeys, apprentice Jockeys and visiting apprentice Jockeys who are licensed by Racing Queensland Limited to ride in a horse race in Queensland within the meaning of the Racing Act 2002 (Qld) are covered by Racing Queensland under a Contract of Insurance with WorkCover Queensland for statutory workers' compensation benefits only.

As pointed out, Jockeys are covered for statutory workers' compensation benefits only, for injuries sustained in Queensland while –

- Participating in a race on a Racing Queensland registered racecourse.
- Trackwork to advise on a horse's race potential **without pay** ON A Racing Queensland Limited registered racecourse.

- On a racecourse to race or to advise on race potential **without pay** on a Racing Queensland registered racecourse.
- Travelling to/from to race or to advise on race potential without pay – destination is a Racing Queensland Limited registered racecourse.
- Walking a horse to/from stables, within a 2km radius of a Racing Queensland Limited registered racecourse, to race or to advise on race potential **without pay** – destination is a Racing Queensland Limited registered racecourse.

WorkCover Queensland will pay compensation as if the Jockey were a "worker" as defined under the Workers' Compensation and Rehabilitation Act 2003 (the Act). A Jockey is covered for an "injury" as defined in the Act, sustained while performing duties as detailed above. This includes fatal injuries. This only covers Jockeys for compensation whilst riding in races and barrier Trials.

JOCKEYS COMPENSATION AND ISSUES

Under the Workers' Compensation and Rehabilitation Act 2003, Jockeys are deemed sports people, so they are deemed to be employees for the purpose of the Act. Racing Queensland Limited insures Jockeys by Contract of Insurance with Queensland WorkCover. Their income replacement is capped at \$1300 or 85% of PIAWE for weeks 1-26; 27-104 weeks at 75% PIAWE; over 104 weeks to 5 years at 65% PIAWE.

Under this Contract of Insurance with WorkCover, if a rider is injured and has a concurrent employment he/she can only claim for loss of income by way of race riding fees, percentages of prizemoney (5%) and barrier trial fees.

A large number of Jockeys (conversely approx. 70%) in Queensland, especially country and provincial Jockeys, and also some Metropolitan Jockeys, have concurrent income. If a Jockey is injured and has concurrent employment, then he/she will be financially disadvantaged, if unable to perform their concurrent employment.

This percentage of riders (concurrent employment) work full time during the week and race ride on the weekend i.e. Country tracks on a Saturday with 2-4 race rides at most. The riding fee before any percentages is \$160 per ride.

If these riders are injured in a race or barrier trial and can't perform their concurrent employment because of incapacity, then they're financially devastated because:

- Under the Contract of Insurance the said rider will not receive PIAWE for their other employment.
- If the Jockey is paid to ride trackwork, as extra income, then he/she can't claim PIAWE when injured in a race or trial.

- The said rider will only receive PIAWE for their race riding fee, percentages of prizemoney (5%) and barrier trial fees.
- Approx. 30% of Jockeys sole income is from race riding and barriers. If a Jockey is reasonably successful, unfortunately if injured the weekly benefits are capped at \$1300, and a number of these riders have to take out extra personal accident cover to top-up their income that they do not receive. This can be unaffordable for some riders.

The only time the rider is properly remunerated when injured is:

- If the Jockey is injured at trackwork, on a Racing Queensland registered racecourse, the Jockey would be covered under the horse trainer's Workers' Compensation Policy for 85% of what the trainer paid the rider per week. The rider would also then claim to Racing Queensland Limited under the COI with WorkCover.
- If the Jockey is injured at trackwork, on a Racing Queensland registered racecourse, and the Jockey had an income away from horse racing he/she would be covered under the horse trainer's policy as concurrent income. The rider would also claim with Racing Queensland under COI with WorkCover.
- If the Jockey was injured at their other employment, under the Act, he/she would be covered for PIAWE at this employment and any trackwork income but not Racing Queensland COI.

Under Racing Queensland's COI with WorkCover the riders who sole income is from being a Jockey (approx. 30%), which is race riding and barrier trials, are not disadvantaged. The Jockeys, who race ride, ride in trials and are paid to ride trackwork or have other income, and are injured in a horse race or barrier trials are financially disadvantaged in respect to their concurrent income.

As a result of Racing Queensland Limited's COI there has been a reduction in the number of Jockey licensed in Queensland over the years i.e. in 2009/10 racing season there was 282 Jockeys registered and in 2011/12 racing season there is 249 registered Queensland Jockeys. At present from what we know there is at least 5 Jockeys who are considering not renewing their licenses this year due to risk, that when injured they will become financially disadvantaged. This weighs heavily against their other income.

EXAMPLES OF THOSE AFFECTED

The following is examples regarding Jockeys with concurrent income:

- A rider, who rides in races on a Saturday at Country race meetings has 1-2 rides on an average (\$160 per ride), if lucky occasionally rides a winner or placegetter (5% of \$4,000 for 1st, 5% of \$1,200 for 2nd, and 5% of \$600 for 3rd), paid to ride trackwork at Eagle Farm (\$800 per week) and works Monday to

Friday at Bunnings (\$350 per week clear). This rider was injured in a race at Dalby (fractured leg) and as a result was unable to perform her duties for trackwork or at Bunnings. The Jockey's income from race riding and barrier trials \$12,000 gross per year. Her PIAWE was approximately \$230. Under the COI the Jockey would receive approx. \$196 per week. The rider had rent to pay, car expenses, loan payments, credit card payments and general living costs. This person was very stressed by this. She really struggled. This type of situation no one should go through when they're injured, especially when it was no fault of her own. This rider is seriously considering whether to continue race riding or not.

- Another rider who rides in races on a Saturday in the Country averaging 3-4 rides a week plus percentages. Works at a tractor and farm equipment sales store (income \$750 per week). This rider was injured at Chinchilla. He fractured some ribs. He was unable to perform his normal duties at his other job for a number of weeks. His income from race riding was approx \$35,000. His PIAWE was approximately \$673. Under the COI he received approx. \$572 per week. He had mortgage payments, car payments and other luxuries, credit card payments, schooling expenses and family expenses, and general day to day living expenses. This not only impacted on him but also his family financially and mentally.
- A successful rider was injured late last year. He fractured his ankle and fractured his leg in two places. His ankle was operated on. He was out of the saddle for a period of 3 months. His only income is from race riding and barrier trials. His gross income for the previous twelve months was \$120,000. His PIAWE was approximately \$2,308. The rider did not receive 85% of PIAWE, as stated previously there is a capped amount on the COI which is \$1,300. This rider, as with others, was financially disadvantaged. Like anyone that earns a reasonable income, they have higher living standards and higher costs. Naturally receiving only \$1,300 a week was a financial strain and stress to his family and him.

All Jockeys and Apprentice Jockeys are eligible for the Australian Jockeys Association/Australian Racing Board Workers Compensation Top-up Cover, which is a personal accident. This is paid for by the Jockeys' 1% prizemoney, from all races Australia wide, which was agreed upon by the Australian Racing Board for all Jockeys in Australia.

The cover is through Gow-Gates/QBE Insurers and pays up to up to a maximum of \$300 per week complementing any Workers' Compensation payments i.e. if a rider earned \$1,000 per week in Queensland he/she would receive \$850 per week (85% PIAWE) and the Top-up Cover would complement this with \$150 per week; if a rider was to earn \$2,000

PIAWE then he/she would receive the capped Workers' Compensation payment of \$1,300 plus \$300 (maximum) for the Top-up Cover.

Noting the 3 examples above of riders affected, each rider would receive the full \$300 per week from the Top-up Cover but would still be financially disadvantaged in terms of their total income.

- Dot point 1, First rider's gross income of approx. \$1380 PIAWE but is only able to claim (under the COI) for race riding and trial duties. Workers' Compensation payments of \$196 per week, with the addition of the Top-up Cover of \$300 per week she is still well out of pocket.
- Dot point 2, Second rider's gross income of approx. \$1423 PIAWE but is only able to claim for race riding and trial duties. Workers' Compensation payments of \$572 per week, with the addition of the Top-up Cover of \$300 per week he is still well out of pocket.
- Dot point 3, Third rider's gross income of approx. \$2,308 PIAWE but is receives the capped amount of \$1300 under COI, with the addition of the Top-up Cover of \$300 per week he is still well out of pocket.

It has been said that Jockeys can take out extra personal accident insurance to cover themselves. Jockeys already cover themselves through the 1% prizemoney of all races and for riders to take out any extra cover; it is cost prohibitive for most. Most insurers won't cover Jockeys (to risky a profession). The only one in Australia is Gow-Gates/QBE Insurers. The extra cover this company has for example is:

- Age 30 and under – \$500 (pw) extra top-up cover, premium is \$710; \$1,000 (pw) extra cover, premium is \$1425 per year
- Age 30-39 - \$500 (pw) extra cover, premium \$1350; \$1,000 (pw) extra cover, premium \$1785 per year.
- Age 40-49 - \$500 (pw) extra cover, premium \$1575; \$1,000 (pw) extra cover, premium \$2700.

STATE/TERRITORY COMPARISONS

VIC. – Deemed employees – Industry Funds Premium.

- Income replacement entitlements – Weekly benefits capped at \$2,000, weeks 1-13; 95% of PIAWE; weeks 13-130: 80% of PIAWE; after 130 weeks: 80% of PIAWE if still cannot work until retirement age; **all forms of declared income in assessing PIAWE.**
- Medical, Hospital and like expenses, ambulance, rehab - Met by WorkCover, uncapped.
- Lump sum payments – Maximum; \$530,000 for TPD.

NSW/ACT – Deemed employees – Industry Funds Premium

- Income replacement entitlements – Weekly benefits capped at \$1838.70, weeks 1-26: 100% of base award rate or 80% of PIAWE; after 26 weeks; the lesser of the statutory rate (varying in

relation to the number of dependents etc.) or 90% of PIAWE; **all forms of declared income.**

- **New Amendments waiting to be assented** – Weekly benefits capped at \$1838.70, 1-13 weeks: 95% of PIAWE; 13-130 weeks: 80% of PIAWE; after 130 weeks: 80% of PIAWE if completely incapacitated worker or those partially incapacitated who have returned to work for at least 15 hours per week; no injury payment after 5 years except for those workers with more than 20% impairment.
- **Medical, Hospital and like expenses, ambulance, rehab** – Met by WorkCover uncapped – but medical expenses above \$50,000 require approval.
- **Lump sum payments** – Maximum \$231,000 for TPD, plus pain and suffering up to \$50,000 can be applied.

TAS – Deemed employees – Industry Funds Premium

- **Income Replacement Entitlements** – Weekly benefits capped at a maximum \$1473.54 and a minimum \$736.17; weeks 1-26: 100% of PIAWE; weeks 26-79: 90% PIAWE or 95% if employer does not provide alternative duties; after 79 weeks 80% PIAWE or 85% if employer does not provide alternative duties: **if all part time jobs worker can claim all concurrently.**
- **Medical, Hospital and like expenses, ambulance, rehab** – Met by WorkCover, uncapped.
- **Lump Sum Payments** – Maximum \$266,000 for TPD.

SA – Deemed employees – Industry Funds Premium

- **Income Replacement Entitlements** – Weekly benefits capped at twice the State average of weekly earnings: \$2,159; **All forms of declared income**
- **Medical, Hospital and like expenses, ambulance, rehab** – Met by WorkCover, uncapped.
- **Lump Sum Payments** – Maximum \$420,558 for TPD

WA (at present) – Deemed employees – Industry Fund Premium.

- **Income Replacements Entitlements** – Weekly benefits set as under Award regardless of riders average weekly earnings. Linked to the wage of a stable foreman, award rate at \$663.40 for all Jockeys.
- **Medical, Hospital and like expenses, ambulance, rehab** – Met by WorkCover. Hospital, Medical + like expenses capped at \$53,414; application can be made for additional \$50,000 expenses. Extra extension up to additional \$250,000 can be granted for medical, hospital etc.; vocational retraining up to \$12,463.
- **Lump Sum Payments** – Maximum \$190, 701
- **Proposed Amendment to Act** – Formula for assessing weekly benefits is flawed. The WAJA/AJA have made application to the WA Minister for Commerce, Hon. Simon O'Brien MLC, to amend Section 11 of the Act. The Minister has agreed in principle to amend the Act which will mean that the riders would then be classed as workers not under an industrial award. Weekly benefits

will be capped at \$2060.80; weeks 1-13: 100% PIAWE; 13 weeks onwards: 85% PIAWE. **All forms of declared income.** Expect the amendment to the Act to be passed by second half of 2012.

NT – Deemed employees – Industry Funds Premium

- Income Replacement Entitlements – No cap; private insurer: 5 + public insurers; average levy rate: 2.4; Maximum published levy rate: N/A; weekly benefits 100% new to 75% from 26 weeks. **All forms of income.**
- Medical, Hospital and like expenses, ambulance, rehab – Medical + Hospital: no limit.
- Lump Sum Payments – Lump sum maximum: \$220,147 + additional entitlements available in some circumstances.

QLD (Jockeys/Sportsperson) – Not deemed employees – Racing Queensland Limited fund the premium.

- Income Replacement Entitlements – Weekly benefits; capped at \$1300 per week; weeks 1-26: 85% of PIAWE; weeks 26 – 104: 75% of PIAWE; over 2 years to 5 years: 65% of PIAWE; entitlement case when \$125,000 is exhausted. **Jockeys only covered for race day and barrier trials; not covered for trackwork earnings or second income.**
- Medical, Hospital and like expenses, ambulance, rehab – Met under the COI policy through WorkCover, uncapped. Jockeys are covered for medical cost if at trackwork on a Racing Queensland Limited Racecourse (but not as part of income)
- Lump Sum Payments – Maximum: \$250,000 for TPD (linked to income replacement entitlements); weekly benefits paid prior to settlement to be offset against the \$125,000.

QLD (Worker) – Deemed employees – Industry Funds Premium.

- Income Replacement Entitlements – Weekly Benefits; no weekly maximum; based on normal weekly earnings; week 1-26: 100% of award or 85% PIAWE; WEEK 26-104: 75% PIAWE; over 2 years to 5 years: 65% PIAWE dependent of degrees of impairment; **all forms of declared income included in assessing income.**
- Medical, Hospital and Like expenses, ambulance, rehab – Met by WorkCover, uncapped.
- Lump Sum Payments - No maximum, each case assessed and negotiated based on percentage of impairment.

SUMMARY

To summarise the issues:

- To amend the Act to deem Jockeys as employees, for the sake of Workers' Compensation, of Racing Queensland Limited.
- As is the case in other States, to include all forms of declared income.

- In other States Jockeys are deemed employees of the racing body.
- Another option is to adjust the Racing Queensland Limited Contract of Insurance to include all forms of declared Income.
- All Jockeys are disadvantaged by declared income from only race riding and barriers trials. Jockeys, on the present COI, can't claim for payment for trackwork or for other concurrent income.
- The loss of Jockey numbers every year, in recent times, as a result of the known risk of being injured and not being able to claim for all declared income.
- At least 70% of Jockeys in Queensland have concurrent income.
- The shortage and loss of Jockeys impacts on Country race meetings. A number of horses have to be scratched because of a shortage of Jockeys. This was not the case a number of years ago. There was always a reasonable amount of Jockeys.
- The capped amount of the COI (\$1300) is too low as compared to other States.
- All Jockeys are valuable to the Racing Industry surviving and expanding, whether they are highly successful or of lesser success and ability.

Yours Sincerely



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