

24th July 2015

The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Committee,

Inquiries into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 and Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015

The Queensland Jockeys Association (QJA) is seeking amendment to the Workers' Compensation and Rehabilitation Act 2003 (the Act); Amendment Bill 2015

QJA formally request 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 with reference to Division 2 S.11, Who is a worker, (1) (a) a worker is a person who works under a contract of service.). This would mean they would be deemed **employees** of Racing Queensland Limited.

The Jockeys would then be able to be covered under a Trainers Workers Compensation on "**Private Training**" establishments, as being deemed workers under the Act he/she would be able to be covered by the trainer.

Under the Racing Queensland Contract of Insurance, Jockeys are not covered at "Private Training" establishments.

Presently the Jockeys under the Act are deemed sportspersons (Schedule 2 Part 2); therefore the Jockey can't be covered at private venues for the sake of Workers Compensation.

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.

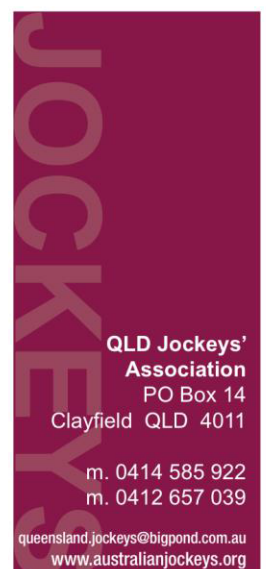
The Workers' Compensation Amendment Act No.66 of 1994, an Act to amend the Workers' Compensation Act 1990, assented to 1 December 1994.

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.



BRANCH



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 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 –

- (a) Participating in a horse race other than a harness race, at a racecourse licensed by the policyholder.
- (b) Carrying out riding work, or the usual duties of a jockey, on a racecourse licensed by Racing Queensland:
 - (i) while engaged by a trainer who is licensed as a trainer with a Principal Racing Authority; and
 - (ii) In preparation for a horse race other than a harness race, programed in a Racing Calendar.
- (c) Escorting a horse to or from stables, within a 2km radius of one of the policyholder's licensed racecourses in order to complete the work outlined in (a) or (b) above.
- (d) Travelling to or from one of the policyholder's licensed racecourses in order to complete the work outlined in (a) or (b) above.

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. Jockeys are covered for compensation whilst riding in races, barrier Trials and trackwork on racecourses licensed by Racing Qld.

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 \$1600 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 whilst performing his/her duties as a Jockey, he/she is also covered for concurrent/secondary income.

Secondary income was introduced into the Contract of Insurance after the QJA forwarded a submission in 2012 to the Finance and Administration Committee.

A number of Jockeys ride trackwork, as part of their license requirements, at Private Training establishments. The concern is should they be injured, they are not covered for loss of earnings, as they're considered sportsman for the sake of the Act.

This irregularity/inconsistency needs to be addressed before a Jockey is injured on a Private venue with no injury cover. It would be easy to say to the individual Jockeys not ride on these venues but these Jockeys rely on rides from the trainers at these establishments. Also the trainer would

be disadvantaged as he/she would not have the expertise of the Jockey to advise on how the horse is progressing plus the horse/s would not get trained.

STATE/TERRITORY COMPARISONS RE PRIVATE TRAINING ESTABLISHMENTS:

- Vic – riders are covered by RVL on private venues that are approved by Stewards, other private venues the Jockey is covered under the trainers W. Comp.;
- SA – The riders are covered at all venues, including private venues, by TRSA;
- WA – Riders are covered on RWWA Racecourses and Lark Hill Training Centre, at private venues the riders are covered under the trainer's W. Comp.;
- NT – the rider is covered by TRNT on all racecourses, private venues they are covered by the trainer;
- NSW – the rider is covered at all racecourses and private training venues by Racing NSW;
- TAS – riders are covered on all racecourses and private training venues.

STATE/TERRITORY WORKERS COMEPNSATION BENEFITS

VIC. – Deemed employees – Industry Funds Premium.

- Income replacement entitlements – Weekly benefits capped at \$2,130.00, weeks 1-13; 95% of PIAWE; weeks 14-130: 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; \$571,080 for TPD.

NSW/ACT – Deemed employees – Industry Funds Premium

- Income replacement entitlements – Weekly benefits capped at \$1999.30, 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; all forms of income in assessing PIAWE
- 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 \$1606.14 and a minimum \$803.07; 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 \$336,623.10 for TPD.

SA – Deemed employees – Industry Funds Premium

- Income Replacement Entitlements – Weekly benefits capped at twice the State average of weekly earnings: \$2,798.00; All forms of declared income; 0-52 weeks 100% PIAWE; 53-104 80% PIAWE; 53 weeks onwards (retirement age) 80% PIAWE for seriously injured workers; All forms of income in assessing PIAWE
- Medical, Hospital and like expenses, ambulance, rehab – Met by WorkCover, uncapped; ceases after 12 months after income payments end (except for seriously injured workers; receive lifetime care and support)
- Lump Sum Payments – Maximum \$471,747.00 for TPD

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

- Income Replacements Entitlements – Weekly benefits capped at \$2661.00; 1-13 wks 100% PIAWE; 14wks and onwards 85% PIAWE; all forms of income in assessing PIAWE.
- Medical, Hospital and like expenses, ambulance, rehab – Met by WorkCover. Hospital, Medical + like expenses capped at \$62,023; 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 \$14,472.
- Lump Sum Payments – Maximum \$336,623.10 TPD

NT – Deemed employees – Industry Funds Premium

- Income Replacement Entitlements – Uncapped weekly benefits; private insurer: 5 + public insurers; average levy rate: 2.4; Maximum published levy rate: N/A; weekly benefits 1-26 wks 100% PIAWE; 27 wks to retirement age 75% PIAWE (90% low income earners) capped at a weekly max. 250% of PIAWE (\$3543) (ABS PIAWE = \$1417.20); All forms of income in assessing PIAWE
- Medical, Hospital and like expenses, ambulance, rehab – Medical + Hospital: no limit.
- Lump Sum Payments – Lump sum maximum: 208 x statistic ABS PIAWE = \$294,777.60

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

- Income Replacement Entitlements – Weekly benefits; capped at \$1600 per week; weeks 1-26: 85% of PIAWE; weeks 27–52: 75% of PIAWE; 53-104 wks: 65% of PIAWE; entitlement case when \$296,165 is exhausted. Jockeys unable to be covered on private training establishments.

- 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: \$296,165 for TPD (linked to income replacement entitlements) + \$335,500 gratuitous care.

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 27-104: 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 amend the Act to deem Jockeys as employees, for the sake of Workers' Compensation, of Racing Queensland Limited.
- This would ensure Jockeys can be covered by the trainer for Workers Compensation at all racecourses by Racing Qld, and **“Private Training Establishments”** by the individual trainers.
- 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 **“Private Training Establishments”**.
- All Jockeys are valuable to the Racing Industry surviving and expanding, whether they are highly successful or of lesser success and ability.

Yours Sincerely

Mr. GLEN PRENTICE
PRESIDENT
QJA
PO BOX 14
CLAYFIELD QLD 4011
 [REDACTED]

Mrs. PAM O'NEILL
SECRETARY
QJA
 [REDACTED]

Assistance with document from:
Mr. KEVIN T RING
NATIONAL OH&S OFFICER
AUSTRALIAN JOCKEYS ASSOCIATION
 [REDACTED]



