

10 August 2015

The Research Director  
Finance and Administration Committee Parliament House  
George Street  
**BRISBANE QLD 4000**

Emailed: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

**Inquiry into the Workers Compensation and Rehabilitation and  
Other Legislation Amendment Bill 2015 and Workers  
Compensation and Rehabilitation (Protecting Firefighters)  
Amendment Bill 2015**

Dear Sir/Madam;

I write to you in relation to the Queensland Jockeys Association (QJA) submission dated July 24, 2015, seeking amendment to the *Workers Compensation and Rehabilitation Act 2003* (the Act); Amendment Bill 2015.

Queensland All Codes Racing Industry Board (Racing Queensland) (RQ) notes that it was only afforded the opportunity to provide comment on these matters on 7 August 2015. Given the complexity of these issues and the potential whole of industry impact, RQ considers that 1 business day is an insufficient period in which to properly and fairly respond.

With a view to assisting the Committee, RQ seeks to do so through these submissions as best it can, given the time limitations, however RQ would request that, should the Committee require further information, RQ be afforded the opportunity to prepare a more fulsome submission.

RQ is the control body with responsibility for thoroughbred racing in Queensland.

As suggested in the QJA submission, under the Racing Act (the Act) jockeys are excluded from the definition of 'worker' under the 'sportspeople' provisions in Schedule 2 of the Act.

RQ does not consider jockeys to be employees of RQ for a number of reasons. This is on the basis that the relationship between RQ and the jockeys does not contain characteristics essential to establish an employer-employee relationship, including but not limited to:

- RQ does not engage them for race riding;
- RQ does not hire or terminate their employment;
- RQ does not accrue leave entitlements on their behalf.



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Rather, jockeys are category of persons merely licensed by RQ to participate in the racing industry. Trainers, stable hands, bookmakers and owners are other examples of categories of persons licensed by RQ. There is no question that those parties are RQ's employees. Licensees are bound by the rules of racing and are subject to disciplinary action by RQ (generally through stewards) for the commission of any offences.

RQ merely facilitates a payment to jockeys on behalf of owners as part of a role in the disbursement of prizemoney and returns to the racing industry.

Notwithstanding this, in 2004 RQ recognised that jockeys are an integral part of racing in Queensland and the lack of some form of compensation coverage was a threat to the viability of the racing industry. Without altering the non-employment relationship between RQ and the jockeys, RQ implemented a number of changes with a view to ensuring jockeys received adequate coverage such as to protect the integrity of the industry as a whole.

As a consequence, on behalf of the Industry RQ negotiated a Contract of Insurance (COI) with WorkCover Queensland to ensure jockeys and apprentices were appropriately covered whilst participating in the industry. This policy covers all jockeys riding in races and trials or carrying out trackwork at registered Queensland race tracks. The policy also covers jockeys whilst on a journey to or from one of these activities.

RQ has paid the workers' compensation coverage for jockeys and apprentice jockeys under the COI with Work Cover Queensland since 2004.

The QJA seeks, in essence, to change the following:

- To amend the Act to deem jockeys as employees, for the sake of Workers' Compensation, of RQ.
- To ensure jockeys can be covered by the trainer for Workers Compensation at all racecourses by RQ, and "Private Training Establishments" by the individual trainers.

The annual premium for this policy has escalated a significant degree over the past five years with annual premium now over \$3.5 million annually.

When assessing the true cost of workers' compensation to the industry, it should be noted that RQ currently pays injured jockeys the employer excess which is currently the lesser amount of 100% of QOTE (\$1,456.90 – rate effective as at 1 July 2015) or 85% of NWE. The current cap as per the COI is \$1,600.

With an average of 100 claims per annum over the past five years, this additional cost has been significant. RQ previously partially funded an insurance 'top up' policy for two years to ensure that higher earning jockeys were not disadvantaged financially.

It should also be noted that jockeys also have access to national personal accident cover provided by Gow Gates.

The table below highlights the change in cover over the previous 3 years



from FY2012 to FY2015

Description	FY2012	FY2015
How is weekly rate calculated?	Based on race rides and prizemoney in Australia	Based on race rides and prizemoney in Australia
Second income considered?	No	Yes
Weekly compensation payable	Capped at \$1,300	Capped at \$1,600
Lump sum entitlements	As per the WRCA2003 – based on the applicable table of benefits for date of injury	As per the WRCA2003 – based on the applicable table of benefits for date of injury
Fatal benefits	Limited to the payment of medical and funeral expenses as per section 199 of the Act.	Funeral and dependent payments as per Chapter 3, Part 11 of the WRCA 2003.
<b>Cost to RQ</b>	<b>\$2.4m</b>	<b>\$3.6m</b>

The original coverage under RQ's COI was somewhat restricted with capping on benefits but RQ has negotiated with the QJA on several occasions to increase the extent of coverage, weekly entitlements and various other terms of the policy (such as fatal benefits and secondary income).

These additional items include:

- Increasing the maximum weekly benefits payable several times.
- Reducing the excess period where the injured jockey was not eligible for weekly payments.
- Increasing the maximum cap for entitlements.
- Amending the formula for calculating NWE to include interstate riding fees and other apprentice jockey earnings.
- Extending the coverage of the policy to racing and trackwork related activities within specific racing precincts.

RQ has also assisted the QJA in the facilitation of measures aimed at increasing Jockey mental and Physical well-being following an injury with the aim of reducing the severity of the injury and allowing the Jockey to resume income producing activities as soon as practical.

Comparison of current jockey entitlements across the various Australian jurisdictions indicates that there is not a significant disparity in rates.



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The table below demonstrates that in FY14/15 the majority of jockeys are earning far less than the \$1,600 per week cap currently in the COI.

FY 14-15					
Jockey Earnings Band	Count of Jockeys	% of total	Total Amount Per Band	Average Yearly Earnings	Average Weekly Earnings
> \$250k	3	0.8%	987,158	329,053	6,327.94
\$200k to \$250k	3	0.8%	707,518	235,839	4,535.37
\$150 to \$200k	3	0.8%	514,298	171,433	3,296.78
\$125 to \$150k	6	1.6%	806,691	134,449	2,585.55
\$100k to \$125k	10	2.7%	1,118,599	111,860	2,151.15
\$75k to \$100k	17	4.6%	1,443,774	84,928	1,633.23
\$50k to \$75k	23	6.2%	1,487,680	64,682	1,243.88
\$25k to \$50k	60	16.2%	2,116,895	35,282	678.49
\$10k to \$25k	71	19.2%	1,196,452	16,851	324.07
\$0 to \$10k	174	47.0%	431,738	2,481	47.72
	370		10,810,802		

RQ is in a unique situation when trying to maintain a balance in funding Queensland's racing industry. Subject to RQ's submission above in respect of the non-employment relationship, and strictly limited motivation for engaging with WorkCover in respect of the COI, RQ notes that other employers throughout Queensland are subject to WorkCover's Experience Based Rating (EBR) premium formula or simplified premium model. RQ does not have an 'industry rate' to fall back on and is effectively charged a 'full cost recovery', plus administration cost in the WorkCover premium calculation. RQ understands that WorkCover Queensland is required to operate as a viable commercial business and cannot subsidise RQ's premium costs.

If the submission by the QJA is successful, RQ anticipates further significant premium increases as there are no other 'industry' participants to balance the costs of the industry performance. If jockeys become 'deemed' workers as proposed by the QJA, the impact on RQ's premium is likely to be significant and may be unsustainable by the industry in the long term.

Several of the case studies provided in the QJA submission indicate that the concurrent employment of jockeys is their primary income. For RQ to enter into a COI providing the full coverage as requested by the QJA, and defined as worker in the Act, there is every likelihood that premium increases would cause a dramatic change to the business model of racing in Queensland, and may be unsustainable.

Given the finite amount of income as a result of wagering, any increase in Work Cover premium would place a significant burden on the racing industry in Queensland.

The likely result will see returns to other industry sectors reduced, causing pressure





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on the sustainability of many industry participants..

On the matter regarding jockeys being deemed to be employees of RQ for the purpose of Worker's Compensation. RQ suggests caution should be exercised before formalising such a deemed position. There may be further unintended consequences relating to other benefits and tax treatment of riding fees if Jockey's were deemed to be employees of RQ. RQ proposes this matter be explored further before any decision is made.

On the matter of jockeys riding trackwork, as part of their license requirements, at Private Training establishments, RQ has concerns that should they be injured, they are not covered for loss of earnings, as they are considered sportsman for the sake of the Act. RQ considers that in these instances jockeys should enter into their own arrangements with the owners or operators of such private training facilities while undertaking any work in a professional capacity. This will ensure that while the jockey is engaged in those activities they are covered by that entity's insurance or Work Cover arrangement.

RQ wishes to make the Finance and Administration Committee aware that currently RQ is undertaking a consultation process with industry groups, including jockeys, regarding the way in which returns to industry are distributed. This process is necessary as under the current business model the amount of returns to industry exceed the income received. It is likely that at the finalisation of this consultation process there may be changes to the arrangements to jockeys along with other industry sectors which may have further Work Cover implications.

Additionally, consequent to the MacSporran QC review into the Greyhound Racing industry (also within RQ's jurisdictional control) RQ understands that the State Government is undertaking a consideration of RQ's ongoing structure, and the structure of the Act.

RQ suggests that it would be preferable to delay consideration of any substantive changes to the Act or any deemed relationship between RQ and jockeys such as sought by the QJA until those consultation and Government review processes are complete.

RQ notes that it recently extended the term of the current Work Cover arrangements on the same terms until the finalisation of the consultation process to allow jockeys to continue to receive the same levels of benefits as previously enjoyed.

RQ proposes that the status quo is maintained in regard to Work Cover arrangements until the finalisation of consultation expected to be January 2016. Following this, RQ will engage with Government, the QJA and other industry interest groups to identify an adequate formula for capping of entitlements. In past years, RQ has demonstrated their willingness to vary the COI conditions in response to identified anomalies or deficiencies.

One key element in these discussions with QJA will be to explore the ability to review the premium with Work Cover taking into consideration the limited risk in a low frequency rider sustaining an injury during a ride.



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As previously disclosed, 47% of riders earn less than \$2,500 per year. These riders are once or twice a year riders who partake for their love of the sport and for the benefit of local communities who need additional jockeys on days where there is a large volume of racing such as Melbourne Cup day.

RQ suggests that it could be argued that a jockey of this type could be classified under a different type of riding licence and be treated as a 'hobbyist' where their participation is merely a donation to the industry and their activities could be insured under a totally separate mechanism.

RQ looks forward to discussing these matters with the QJA and Finance and Administration Committee further. If you have any queries in relation to this submission, please do hesitate to contact me on [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

Yours sincerely  
[REDACTED]

Ian Hall  
*Acting Chief Executive Officer*