

**WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT
(JOCKEYS) BILL 2012**

Second Reading

Resumed from 21 August.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [3.06 pm]: It is probably timely that we are dealing with this bill during the final stages of the Kalgoorlie Cup; I am sure all the jockeys will be very pleased to see the passage of this bill at such a significant time of the year. I say at the outset that dealing with this bill has been an interesting learning curve for me. It is a very narrow bill but an extremely significant one for jockeys; it amends the Workers' Compensation and Injury Management Act 1981.

We are talking about the sport of kings. Significant amounts of money are invested in racing, across Australia and across the world, but unfortunately jockeys do not always receive the benefits of that if they have sustained an injury, or worse. The changes that will come about as result of this legislation are, indeed, very important. Part of the reason that it is a steep learning curve for me is that I can think of only two occasions in my life on which I have attended race meetings; one was the 1980 Perth Cup, which stands out in my mind for a particular reason, and the other was the annual Picnic at Hanging Rock in Victoria, on the fourth day of an extended wedding party. Members can imagine what sort of a jubilant day that was; I think my horse is still racing! Those are the only two times I have attended a horse race, and I am not terribly good at picking winners in that regard.

However, I must say that I have, from time to time, watched a bit of horse racing on TV, and I am always amazed at the way these animals are managed on the track. It is quite horrific when we see a jockey fall from a horse and see the other horses just continue on over the fallen jockey. I sometimes hold my breath while waiting to see whether the jockey will rise or not. I understand that there have been a couple of hundred deaths of this sort across Australia over many years. I particularly watched the very famous Black Caviar race at Ascot earlier this year; I sat up very late because I was intrigued, as were most people in Australia, to find out whether this horse would get over the line again and set a record. I remember watching as they walked the horse across the field; it is a huge beast of an animal—an extremely high horse indeed—and then I saw the jockey who got on the horse, and there is no comparison —

Hon Simon O'Brien: He's just the pilot!

Hon KATE DOUST: That is right! I thought, "What a monster of an animal!"—a beautiful horse, but a monster of an animal. Would it not be terrifying to ride that horse down the track, and horrific to come off it?

Hon Simon O'Brien: If you come off Black Caviar, it means that every other horse is coming behind, so you're in bigger trouble!

Hon KATE DOUST: That is exactly right. I certainly admire the people who take this pathway in life. I imagine that there are a lot of complications with this line of work. It is not the sort of job in which people can say, "I'm a jockey and I'm going to be a jockey for life". That is because so many restrictions are placed on jockeys with regard to how they manage and sustain their lifestyle. It is a very, very tough industry for all involved.

This bill has had a long gestation. I understand that the discussions about the changes to the Workers' Compensation and Injury Management Act to include jockeys started during the time of the last government, and that sometimes these types of discussions are quite involved and take some time. But I will come back to that. When I was looking for information and doing some research about some of the issues around this line of work and why it is necessary to make these types of changes, I came across a very good article in *The Australian* of Thursday, 9 November 2006. Even though this article was written in 2006, a lot of the information in it is still relevant today when we think about the types of issues that jockeys have to confront in this industry, and it helps to set our minds at ease as to why we need to afford jockeys this level of protection and comfort and ensure that if they suffer an injury, they are given an appropriate level of compensation. The article is headed "Jockeying for an even-handed deal", and it was written by Bill Shorten—I can see my colleagues behind me chuckling away—who at that time was the national secretary of the Australian Workers Union, which was, and still is, very actively engaged in representing the jockeys who are members of that union. As I have said, because this article was written in 2006, some of the figures that I will quote may be slightly old, but they give us an idea about the situation that existed at that time. I do not know whether there has been any significant movement in those figures since that time. The article states in part —

This week, as millions of us have focused on picking a winner in the Melbourne Cup, it's worth sparing a thought for the lot of Australia's jockeys, who (along with their mounts) are the heroes of the racetrack.

Despite the popular perception of a glamorous lifestyle supported by large earnings, the reality is very different, particularly for those jockeys who are not among the 10 top earners in the country.

Imagine a job where you're expected to be available for work 363 or 365 days a year (including all weekends), maintain your bodyweight at 20 per cent below its normal level and be guaranteed to incur at least one injury in your career that involves a fracture to some part of your body.

Combine that with a requirement to get up at 4am, six days a week, travel more than 160,00km a year, and endure regular media and public scrutiny.

Industry statistics show that while the track's top earners have an average income of \$215,001 a year, for those jockeys ranked in the next 110 their average annual income is only \$53,000.

From this they are expected to help fund their public liability insurance and death and disability insurance. They are responsible for purchasing their safety equipment, including vests and helmets, as well as their saddles and boots.

As well as the risk of serious injury or death, they face the solid prospect of the early onset of osteopenia (a loss of bone density and subsequent vulnerability to fractures), due to the physical demands of the job.

The article then goes on to talk about how the average career of a jockey lasts only about 10 years. Therefore, the lifespan of a jockey work-wise can be extremely short, depending on their fitness and their capacity to continue in the job, and I suppose also in some cases whether they are given work to do. The article goes on to say that the earnings of Australian jockeys fall behind those of jockeys in other countries, including Japan, Britain, Ireland, Hong Kong and Macau, and it goes on to list the amounts. It talks also about how in Western Australia at the time the losing fee for an unplaced jockey was \$120. So jockeys might be running in a number of races, but if they were not winning, that is all they would get. That is not a lot of money to enable them to sustain themselves and also to pay for all the other expenses that they have to incur. The article talks about how a jockey in Western Australia at the time was earning about 33 per cent less than a jockey in Victoria. The article also mentions a range of dollar figures relating to the nature of the work and gives a comparison of rates around the country. It goes on to say that it is in the interests of a vibrant racing industry that everyone, including jockeys, receives a fair share of the industry's success. I thought that was an interesting article to look at to pick up on some of the issues and some of the things that jockeys have to provide for. Indeed, not everyone is on a winner; there can be only one winner per race.

In Western Australia, for the purposes of this legislation, we are talking about a very small group of people whom this will impact upon. About 90 licensed jockeys operate in Western Australia. So this is very much a niche piece of legislation. Of those 90 jockeys, I imagine that only a very small club in that figure would be earning consistently high dollar figures for the races that they are winning. The vast bulk of the other jockeys would be earning a lot less than that, based on the various fees that are paid and depending on whether they win or they lose.

There was another interesting article in *The West Australian* of 1 August 2007. I might note that 1 August is the official horses' birthday, so this was probably an appropriate article for that day. I have not done a media check to see whether there is a regular racing article written on that day, but I imagine there probably is. The article is headed "Compo fight on cards", so it goes back to when the discussions would have been commencing. The article states in part —

Australian Jockey's Association chairman Ross Inglis has warned interstate riders not to ride in WA because the workers' compensation paid to injured riders was inadequate.

The article goes on to quote Australian Jockey's Association president, Bernie Ryan, as saying —

"It needs new legislation to be passed so that jockeys are recognised as professionals and are paid accordingly to their earnings.

"It is a big drop for the family of a rider earning \$1800 or \$2000 a week to drop to \$600 while he or she is out injured.

We need to keep in mind that jockeys may incur injuries and be out of the industry for a few weeks or a few months, or even for years, or permanently, depending on the nature of the injury. When we combine height and speed, I imagine that the injuries may be significant. The article goes on to give a range of examples of some of the injuries that occurred to riders over a short period prior to this article being written. The website of the Australian Jockey's Association gives a range of example of jockeys who were at the start of their career in some cases and were doing quite well, but injury has stopped them living the life that they knew. The article quotes some examples of young men who are now confined to a wheelchair and fully dependent on 24-hour care, and who were not compensated adequately for the full costs that they incurred, and it talks about the struggle that they are having in their lives as a result of that. Given all these issues, we might ask: why would someone get on top of a very fast horse and race? It sounds as though it is a very dangerous job. But I understand that there are

people in the world who are passionate about racing and enjoy that type of work—and why would they not, I suppose.

This is a very significant piece of legislation, because it will align licensed jockeys with other workers and afford them a higher rate of compensation. Currently, if a licensed jockey is injured in the course of their work, their pay rate for compensation is linked to that of a stable foreman. This sounds a bit odd, but it is actually part of the Horse and Greyhound Training Award—maybe the dogs get a better deal than the horses; I am not too sure. Currently, a jockey who is injured as a result of their work receives about \$706 a week. In some workplaces, that might be a reasonable amount of money. But for a jockey who has been winning on a regular basis and has been bringing home a few thousand dollars a week, \$706 a week is not a lot of money. It is a substantial drop in income if a jockey has to provide for his family and pay for his mortgage and all the other costs that are part and parcel of his work, be that fitness training, medical costs or other things. It is a fairly significant burden on that jockey to take that substantial drop. So, the change brought in by this legislation will be fairly good.

This legislation will also clarify the scope of the workers' compensation insurance obligation between Racing and Wagering Western Australia and the licensed trainers regarding work being done by jockeys for trainers at unlicensed facilities. I understand that if a jockey is performing work at a licensed facility, Racing and Wagering Western Australia will be deemed to be the employer of that jockey. So if an incident occurs in that situation, RWWA will be the responsible organisation for that jockey's compensation. If the jockey is riding in an unlicensed facility—they are working for their trainer in that environment—and an incident occurs, their trainer will be the responsible party to manage their workers' compensation. I understand that that issue has needed clarity and hopefully that will be achieved with this legislative change.

This bill amends only a couple of sections in the Workers' Compensation and Injury Management Act. It amends sections 11A and 159, and also schedule 1 of the act. Even with those slight changes, it is still a significant change for those 90-odd licensed jockeys. It does not impact on any other arrangements for track work riders, apprentice jockeys or harness reinsmen. That question was canvassed by my colleague Hon Matt Benson-Lidholm when we had a briefing. I mentioned apprentices because when I had my briefing, I was provided with an article from *The West Australian* of Monday, 10 September—it is only a couple of weeks old—about the young woman apprentice jockey who won the Perth Cup last year or the year before. I understand that she had a dreadful fall at Belmont a couple of weeks ago, and she is now going to be off work for an extended period. She has not only done her ankle, but also has to wear a neck brace. The injuries that people can sustain in this line of work can be significant and, as we have already talked about, they can be permanent and, in some cases, fatal. I do not know whether all of us get to the back of *The West Australian* every day to read these types of articles —

Hon Sue Ellery: I think the boys do.

Hon KATE DOUST: I know that some boys do, and I am disappointed that Hon Max Trenorden is not in the chamber because I am sure he would have talked at length about his degree of support for jockeys to be protected under workers' compensation.

Hon Norman Moore: He is probably outside on parliamentary business at the racetrack.

Hon KATE DOUST: Checking out how the turf is I am sure. Unless a person has that visual on the screen, it is probably not something that Joe Public is always aware of. People see the glamour and the glitz and they go out and have a great time at the racetrack, but they do not always think about what happens to the jockey if he comes off that horse.

Hon Robin Chapple: Or, for that matter, the horse.

Hon KATE DOUST: What happens to the horse is another discussion; we are just talking about jockeys today. For a lot of people, it would come as quite a shock to realise not only the physical damage, but also the financial damage incurred by a jockey as a result of injuries sustained in their work. It is not the same type of work that most of us have experienced in which there is a certain degree of reliability in most cases; we can expect to go to work and come home in one piece. When a jockey climbs into that saddle, he really is at greater risk perhaps than most other types of workers.

Hon Robin Chapple: It is a long way up.

Hon KATE DOUST: It is a long way up, so there is perhaps a higher element of risk. It would be very interesting to run an occupational health and safety course for jockeys. When we explore the risk, the hazard management and the solutions —

Hon Michael Mischin: Seatbelts?

Hon KATE DOUST: I cannot see that happening somehow, but there are a range of issues around this matter. This bill will implement a very important change and is certainly welcomed by not only the jockeys, but also the Western Australian Jockey's Association. I had a brief discussion with the Australian Workers' Union that represents a number of those jockeys, and it is very keen for this legislation to go through also.

I pick up on the comment made by Hon Michael Mischin that probably a range of things need to be done in the racing industry to better protect all workers. A lot of that would focus on issues around occupational health and safety. I imagine it would be a difficult industry in which to put in place standardised solutions because there are variables.

Hon Michael Mischin: A lot of sports and recreations are inherently dangerous; people have to realise that.

Hon KATE DOUST: We just have to look at hockey, cricket and football players. There are a vast number of professionals, and they are high-risk sports; who knows when they might get a hockey or cricket ball in the head? All sorts of things happen. There is a risk in everything we do. However, it is good that this issue is finally being addressed.

I have a couple of questions for the minister about some aspects of how this legislation will be managed. Will there be a schedule containing additional information about the types of injuries that jockeys will be covered for? Usually there is a list of injuries covered under workers' compensation, but because of the nature of the work that jockeys do, which is slightly different from most workers, will any variations be added to that list? Also, given that some jockeys ride interstate and overseas, if they and their employer are normally based here and they are riding in Hong Kong or Macau and are injured, will they be covered for workers' compensation in that environment; and, if not, what arrangements are currently in place for those types of situations?

One issue raised with me, which I know the minister canvassed in his second reading speech, was about transitional arrangements for jockeys who are injured prior to the commencement of this legislation. I have put an amendment on the notice paper in connection with the commencement clause, which is split into two parts. Given that it has taken a long time to get this legislation through the negotiation and drafting process and into this place why could it not have been backdated to 1 August?

I note that this legislation was read in not long after that date, and it probably went through cabinet prior to that date. There was a view that it would have been appropriate to have a commencement date for the start of the racing season, which is also, as it happens, the horses' birthday. It would have been perhaps a symbolic date on which to introduce such a significant change for people in the industry. I will be interested in the minister's response to that issue, but I will certainly move an amendment to address the matter that was raised with me by those interested parties.

There are two other issues. One issue that came to mind when I was looking through the bill is a call by the Australian Jockeys' Association to not just address the issue of workers' compensation for injured jockeys, but also set up a fund to assist those jockeys who have significant injuries. I referred briefly to a couple of examples in which quite young jockeys are now wheelchair-bound and have to rely on support from others because their compensation payments certainly did not cover their costs. The AJA has called on each state to contribute \$500 000 to a national jockeys trust. I understand that the Western Australian government has not accepted that opportunity. If the other states have stepped up to that, I wonder why the Western Australian government would not agree to provide some sort of assistance. On the other hand, the Leader of the Labor Party, Mark McGowan, has pledged that if Labor wins the next election, it will contribute \$500 000 to that fund to provide that level of support. It would add to the recognition that it is important to provide the financial assistance needed by people in this situation. We know that there have been a number of deaths and serious injuries in Western Australia, so I would like to know from the minister why this government has not decided to step up and provide that level of support in that space. After 9 March next year and with a change in government, I look forward to a Labor government providing that assistance. It is a very important thing to do.

Hon Simon O'Brien: You don't sound very convinced when you say that.

Hon KATE DOUST: I am happy to read the press release and that will convince all members. The press release from 19 May this year states —

WA Labor pledges \$500,000 for National Jockeys' Trust

A WA Labor Government would contribute \$500,000 to an Australian Jockeys' ... trust fund to support jockeys who were seriously injured or killed at work, Labor Leader Mark McGowan said today.

Mr McGowan said seriously injured jockeys and bereaved families of jockeys who died on the job were facing undue hardship because the National Jockeys' Trust lacked adequate funding.

"The Trust needs a one-off \$5 million injection to continue supporting jockeys with career-ending injuries and the families of jockeys who die," ...

“The AJA has called for each State in Australia to make a donation to the Trust, which was established in 2004 to provide assistance to jockeys who suffer financial hardship as a result of injury, illness or death.

“The Barnett Government opted not to support the AJA in their call for funding despite the racing industry contributing \$600 million annually to the State’s economy.

“Horse racing is a popular leisure activity for many Western Australians, with 21,000 alone watching the 2011 Perth Cup at Ascot Racecourse.

“However it is also a dangerous occupation with 311 jockey deaths recorded in Australia due to falls.

“This includes Western Australian jockey Jason Oliver who died from head injuries from a fall at Belmont Park Racecourse in 2002.

“These men and women place their lives in significant danger each time they saddle up for a race. Disturbingly, the rate of suicides in the industry is also climbing according to the AJA.

“Jockeys accept the risk of illness, injury and death as part and parcel of the job.

“The families of jockeys who have been killed or seriously injured, including those who have sustained serious spinal and brain injuries, face financial hardship.

“WA Labor believes the State should reinvest money from the racing industry back into supporting our jockeys.

It goes on to state that a WA state Labor government would contribute \$500 000. I am trying to find a press release from John McGrath that came out a while ago. John McGrath is very supportive of the racing industry. I think he is also an owner of racehorses in his own right. He put out a press release when he was the shadow minister responsible for racing and gaming. His press release was in relation to safety equipment. He also referred to the need for a national review of safety in the racing industry. I am sure that when this bill eventually gets to the Assembly, the member for South Perth will be very keen to make sure that it passes through Parliament fairly quickly.

I will not say much more because it is quite a succinct bill. It makes three quite clear changes that will improve the lot of licensed riders in the Western Australian racing industry. As I said, it is a niche group of about 90 riders. The legislation has been long anticipated. It will provide a much more balanced playing field for those individuals so that if they are unfortunate enough to have a fall that results in injury or death, they and their families will be provided with a greater degree of comfort in that they will be able to pay their medical bills, their mortgage and other ongoing costs and provide for their families until they can either go back to work or find other alternatives, if they are able to do other types of work. These are very positive changes, but I do not think this should be the be all and end all. I hope that, over time, given that this is a dangerous industry to work in, other measures are taken to address the health and safety matters that are fairly constant in this business.

The only other comment I will make is that although I acknowledge the importance of this bill and the significant changes it will make to provide for those players in the industry, which changes will be welcomed by everyone, I note that another piece of legislation has been anticipated by another group of very important workers in our state. It is a great shame that the government has not done enough to address the concerns of the firefighters in this state about workers’ compensation for the types of injuries that they sustain in the course of their extremely dangerous work. I know that there has been some debate in the other place recently on a private member’s bill. It is a shame that the government has not picked up on the concerns of that industry and also made that a priority. I just wanted to put that on the record.

Hon Simon O’Brien: You’ll be glad to know that we have.

Hon KATE DOUST: I know it is a separate issue from the one that we are dealing with now, but I thought it was an opportune time to raise the matter. We may not get the chance to debate that bill during this session of Parliament, but I think it is a significant change required for that area of work. If the minister has information that would enlighten us on how the government will proceed in improving conditions and workers’ compensation outcomes for firefighters, we would certainly be very eager to hear what he has to say in that regard.

With those comments, we are very supportive of these changes. We think the changes will be of utmost benefit to jockeys. I indicate that when we go into the committee stage, the opposition will move an amendment to the commencement date to seek to make the start date of this bill 1 August this year, which I understand would provide some comfort to some jockeys in the industry. I understand that since the Workers’ Compensation and Injury Management Amendment (Jockeys) Bill 2012 was read in, there have been a couple of serious injuries. People are concerned about one jockey in particular, who I understand had very high earnings and is very successful; he has sustained a very significant injury and will be caught under the current system and paid the

lower rate. He will not be picked up under the new regime unless, of course, the date is amended. With those words, we will support the bill and look forward to the discussion during Committee of the Whole.

HON NICK GOIRAN (South Metropolitan) [3.40 pm]: I rise to make some comments in relation to the Workers' Compensation and Injury Management Amendment (Jockeys) Bill 2012. I will begin by saying to the minister with carriage of this bill that for me the highlight of the second reading speech was the following line —

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill.

Being a new member of that committee, I can tell members that the last thing we needed is another piece of uniform legislation.

Hon Simon O'Brien: The members are dropping like flies on the committees.

Hon NICK GOIRAN: Yes, they are; I understand we have a new recruit as well.

Hon Simon O'Brien: We'll see how long he lasts!

Hon Peter Collier: He didn't even vote for himself!

Hon NICK GOIRAN: In all seriousness, I rise to support this bill. I recognise that notwithstanding that the core bill we are seeking to amend commenced in 1981, jockeys were not added to the scheme until 1985. My understanding is that at that time their rate of compensation was linked to that of a stable foreman. The award that deals with that at present is the Horse and Greyhound Training Award 2010. When considering this bill it was instructive to note that last September WorkCover WA produced a decision regulatory impact statement entitled "Review of Weekly Compensation Rate for Jockeys", page 1 of which states —

The weekly compensation rate for jockeys under the Workers' Compensation and Injury Management Act 1981 (the WCIM Act) is linked to the award rate for stable foremen under the Horse Training Industry Award 1976, which is currently \$663.60. All licensed jockeys receive the same amount of weekly compensation benefits, if unfit for work, regardless of their pre-injury earnings.

It is interesting, of course, to note that, consequentially, the only group of workers we are seeking to address under the jurisdiction of this amendment bill is jockeys. This amendment bill will, of course, align jockeys with other workers by ensuring that their average earnings of the past 12 months will apply for the first 13 weeks of injury, and the usual step-down will apply thereafter.

In considering this matter it was interesting to note that three options were considered by WorkCover WA in the document it released for consultation as far back as May 2011. Those options were outlined follows —

Option 1 No change to the current method — jockeys would continue to receive weekly compensation based on the weekly pay rate for stable foremen

In other words, the status quo would remain. Option 2 was to —

Align the rate of jockeys' weekly compensation with pre-injury average weekly earnings — the same method as other workers under the WCIM Act (including income from any concurrent employment)

Option 3 was —

Weekly compensation payable based on pre-injury average weekly earnings from racing, riding work for a trainer and carrying out the usual duties of a jockey (other income from concurrent employment excluded)

Option 2 was recommended to be the preferred option.

If one takes the time to delve deeper into WorkCover's regulatory impact statement, one will note that the advantages and disadvantages of each option are outlined. It is instructive to consider those, particularly the option 1 advantages at page 4, which read —

- provides a safety net for low income earning jockeys and a guaranteed weekly compensation payment despite fluctuations in remuneration — a common feature in the racing sector
- easy to administer — proof of earnings is not required
- no legislative changes required.

The document then lists four disadvantages, which are —

- jockeys with earnings above \$686.20 are disadvantaged

That is precisely what this bill seeks to address. The second disadvantage is that —

- jockeys earning less than \$686.20 benefit financially from being on workers' compensation which may blunt the incentive to return to work

The interesting anomaly in the current system is that a worker would be better off on workers' compensation. The third disadvantage is that it would be —

- inconsistent with the methodology that applies to other non-award workers under the WCIM Act, whose weekly compensation payments are based on pre-injury average weekly earnings

The fourth disadvantage is that it is —

- inconsistent with other workers' compensation schemes.

I cannot recall whether I read that in the minister's second reading speech or elsewhere, but I recall that what we are doing will bring jockeys into line with other Australian workers' compensation jurisdictions. Perhaps the minister can correct me if I have misunderstood.

Moving to option 2, which is to align weekly compensation with pre-injury average weekly earnings, a number of advantages and disadvantages were listed. The three advantages were —

- jockeys earning above \$686.20 would be compensated commensurate with their pre-injury average weekly earnings (subject to the cap and step down that applies to all non-award workers)

I think that was Hon Kate Doust's point. She said that some people earn above that, so they are disadvantaged in that respect. This would be one of the advantages of an amendment to the scheme. The second advantage was that it —

- would bring jockeys into line with other workers in Western Australia whose earnings are not prescribed by an industrial award

It is interesting to note, minister, that not all workers are on precisely the same system in Western Australia; it actually depends on whether someone is on an industrial award or otherwise. However, it has at least been acknowledged and conceded that this would bring jockeys into line with a large proportion of workers in Western Australia, but not necessarily with those on a prescribed award.

Hon Simon O'Brien: I think really it relates more to people on, say, commission employment—that sort of thing—rather than the regular industrial agreement a lot of people have.

Hon NICK GOIRAN: Yes. It certainly does affect the step-down at the 13-week mark for a worker, depending which system they are under; it is, nevertheless, an advantage.

The third advantage listed for option 2 is that it is —

- consistent with other workers' compensation jurisdictions.

So that answers the earlier question.

We should be aware that two disadvantages of what we are seeking to do were listed. The first is that —

- the safety net for low income earning jockeys would be removed

The second disadvantage is that —

- jockeys earning less than the stable foremen award (currently \$686.20) would be worse off.

As I say, it is almost a bit of an exaggeration to call that a disadvantage—no disrespect to those who would be captured by this. With the greatest of respect to them, if someone is earning less than the award prior to being injured, and then they are receiving a greater amount once they are injured, one can understand why it might not put a great amount of weight on that being a disadvantage. I think that is appropriate and fair. In fact they have been advantaged for a period of time perhaps unfairly.

I move now to option three. Two advantages are listed. The first is that it ensures that the weekly compensation payable relates to earnings received from racing, riding work for a trainer and carrying out of the usual duties of a jockey. Secondly, it limits the industry's liability to pay weekly compensation for jockeys who ride or race infrequently and whose earnings are, in substance, from alternative employment. That would be the advantage of option three.

To conclude on this point, the statement from WorkCover in September last year outlined two disadvantages to option three. Firstly, it would be inconsistent with the methodology for other non-award workers whose weekly compensation payable includes income received from any concurrent employment. Secondly, it would disadvantage jockeys reliant upon income from other employment but unable to work due to a racing or riding incident.

Having said all of that, I congratulate WorkCover WA for the work it put into this impact statement, which was both comprehensible and comprehensive. It is important for us to realise that there is a cost implication in proceeding with this particular brand of reforms. Page 10 of the statement notes the estimated overall premium impact of option 2. Naturally, that would be the case, because option one is the status quo, so there is no impact. It states that the impact of option two would be an increase of between 20 per cent and 52 per cent in the 2011–12 premium. It needs to be noted that this is the most expensive option. Option three has the impact of between one per cent and 24 per cent increase in the 2011–12 premium. We have to appreciate that what we are deciding here is going to have an expensive impact, but on balance it seems that it would be money well spent for those involved.

I was keen to consider what consultation had been undertaken by WorkCover. I was interested to note that the member for South Perth, John McGrath, MLA—the hardworking colleague of the minister, Hon Phil Edman and me—was one of the people who felt the need to put in a submission. I note that his comments are recorded at page 12 of the statement by WorkCover —

Mr John McGrath MLA supports legislative amendments that align the rate of weekly compensation with pre-injury earnings. Mr McGrath suggested income from concurrent employment should be included to protect jockeys who ride mainly in country and provincial meetings on a weekend and rely on other forms of income. Mr McGrath's view is that industry has a responsibility to meet the additional insurance cost.

I certainly endorse the comments from the member for South Perth in relation to this matter.

Any amendment that provides fairer compensation to a worker, in this case a jockey, must be supported. I would say that this amendment is well overdue and so I commend Minister O'Brien for bringing this to the Parliament. I have something to say and get on record, because I note that Hon Kate Doust wanted to get her perspective on record with respect to the firefighters' matter, so perhaps I can get a certain perspective on the record. As I say, this amendment is well overdue, and it does raise the question of why this was never addressed during the eight-year reign of the Labor Party.

Hon Kate Doust interjected.

Hon NICK GOIRAN: It always intrigues me whenever we deal with workers' compensation matters that the party of the worker failed to address these particular matters and it has been left to the Liberal Party —

Several members interjected.

The DEPUTY PRESIDENT (Hon Jon Ford): Order, members! We were doing so well.

Hon NICK GOIRAN: It is unfortunate that it is easy to hit a sensitive spot at times on Thursday. As I said, it is interesting that some members in the chamber think it is okay for them to provide a certain perspective, but then they get sensitive when somebody else provides a perspective.

Hon Kate Doust interjected.

The DEPUTY PRESIDENT: Order, members!

Hon NICK GOIRAN: As I say, whenever we deal with workers' compensation reforms, it always intrigues me when it is the Liberal Party, in this case under the stewardship of Minister O'Brien, that is bringing in these matters and addressing the anomalies in the system. For students of workers' compensation reforms, I am sure, just like the Leader of the Opposition, that they would be well aware of the reforms that were brought in during that eight-year period, which were unhelpful reforms and many workers are still left disadvantaged by those reforms. It is important for members to be aware of the ongoing problems in the workers' compensation system.

Hon Kate Doust interjected.

The DEPUTY PRESIDENT: Order, members!

Hon NICK GOIRAN: I am encouraged that Minister O'Brien is addressing it, because those who are aware of what is actually going on and not making comments out of ignorance would be aware that Minister O'Brien is in transition with what is called phase 2 of the reforms. He has already championed and achieved phase 1. We are now in the process of moving towards phase 2, which, as the minister would be aware, I am enthusiastic about and supportive of. I am pleased to see that it is in fact our party on this side of the chamber that is addressing that in the absence of work that should have been done well before now. With those comments, I reiterate that I support the second reading of this bill and thank the member for bringing it to the attention of the house.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.58 pm]: I rise to support the Workers' Compensation and Injury Management Amendment (Jockeys) Bill 2012. It is interesting where it has come from over time and

how it has got here. I must thank Hon Nick Goiran for actually having stolen most of my speech notes in terms of his presentation.

Interestingly, we have talked with the Western Australian Jockeys' Association and Racing and Wagering Western Australia and, yes, there is definitely a need for this. I have a couple of questions for the minister arising in the main out of the report that has just been referred to by Hon Nick Goiran—that is, WorkCover WA's "Review of Weekly Compensation Rate for Jockeys". I will have some questions on that, and then I want to get some clarification from the minister about contract earnings.

I think we first need to go back to when the act was first amended to provide workers' compensation for professional jockeys. That occurred in 1985 and until then a jockey was not regarded as a worker. If this amendment had not been made, jockeys would have continued to be excluded from access to any workers' compensation, either because they were nominally self-employed or because they were considered to be contestants in sporting activities who were generally excluded from workers' compensation.

It is interesting to note the different methodologies in other jurisdictions. Although we are one of the last states to bring this level of compensation into play for jockeys, it is not necessarily consistent with the level of compensation in South Australia or the Australian Capital Territory, or even with the level in the Victorian legislation. Quite clearly, as Hon Nick Goiran has pointed out, the WorkCover WA report "Review of Weekly Compensation Rate for Jockeys" came up with three options. If we go further into the document on those three options, we can see some really quite interesting points and I will turn to those now. Quite clearly there is a point in option 2 on the disadvantages. It states —

- the safety net for low income earning jockeys would be removed
- jockeys earning less than the stable foremen award ... would be worse off

The award is currently \$706.10. I go back in that document to the impact analysis and turn to two tables identified on page 7. I quote from the document —

The impact of any change would apply only to licensed jockeys in terms of the rate of weekly entitlements if unfit for work and RWWA in terms of potential premium costs.

...

All jockeys are impacted in that if injured and unfit for work the methodology for determining weekly compensation payments affects the level of income replacement. The impact may be positive or negative depending on the particular jockey's actual earnings.

To facilitate an analysis of that, Racing and Wagering Western Australia collects data on jockeys' earnings, being commissions, ride fees and trial fees. This data includes full time, part time, seasonal and visiting jockeys.

I refer to the 2009–10 figures in table 1 of the document. It is important to note that the compensation rate was under the stable foreman award for 66 per cent of the 96 licensed jockeys; for between the stable foreman award and the weekly cap, 17 per cent; and for greater than the cap, 18 per cent. Based on that data, the majority of jockeys in 2009–10 earned less than the stable foreman award. Although this appears to show that the majority of jockeys are better off under the current arrangement, the situation is different when examining the earnings of jockeys who have made workers' compensation claims. That issue is referred to in table 2 of the document. I was expecting to see a marked change in that figure. There is a change, but it was not that significant. Workers' compensation claims for jockeys in 2009–10 by percentage of weekly earnings for less than a stable foreman award was 33 per cent; for between a stable foreman award and the weekly cap, 38 per cent; for greater than the cap, only 28 per cent.

The data illustrated was based solely on commissions, ride fees and trial fees. This data did not include income paid to jockeys by trainers or from concurrent employment. The absence of conclusive data on jockeys' earnings and income sources other than commissions, ride fees and trial fees makes it difficult to identify the actual number of jockeys who will benefit under option 2. However, jockeys who receive income from concurrent employment will be comparatively better off under option 2, as the income would be taken into account in determining the weekly compensation rate. I am concerned that a lot of jockeys who do part-time rounds out in the Pilbara and places like that do not necessarily have a large earning base, and in some regards are quite seasonal. Although their earnings might be relatively high during the season, their weekly earnings based over the year would most probably be less than a stable foreman award. I am therefore concerned that some jockeys will miss out on this process.

I want to ask the minister a couple of questions about that which I hope he will be able to answer. Quite often jockeys get injured. Let us say a jockey who has had particularly high earnings—a well-known jockey who has done exceptionally well—was out of work for the previous year due to broken bones or whatever. He then comes back into work as a highly paid jockey because he has particular skills and his skills are sought after. He has a

subsequent accident in the following year and, although his normal rate of pay would be significantly higher due to his skill base, he is earning less because his earnings in the previous year were limited due to his injury. Will that jockey's rate of pay on his return to work be based on the previous year when he was injured and had no work, or on the basis of what his worth is to the industry? I think that might be a problem. Jockeys get injured quite regularly, and some have lean years, not based on their skill but based on their incapacity. I would like the minister to have a look at that and identify what will happen on that issue.

Another issue touched on by Hon Kate Doust was earnings. Well-paid and sought-after jockeys ride in Singapore and in the eastern states and riders come into this state from other countries. I understand this issue is around jockeys who operate predominantly out of Western Australia. If a jockey is earning a significant level racing in Singapore, Hong Kong or places like that, will those earnings be taken into consideration when he or she is injured subsequently in the following year in Western Australia? Also, contrary to that question, is there any nexus between the programs that operate in other states for jockeys who travel interstate that allows for compensation for our jockeys in other states and for other states' jockeys in our state? Is there any balancing mechanism between the states?

I think that really covers my questions. As other members have said, this bill certainly is long overdue and I really hope that it actually does provide the basis for good legislation for jockeys. It is certainly Racing and Wagering Western Australia's preferred option. From conversations my office has had with the Western Australian Jockeys' Association and Racing and Wagering WA, it is the preferred option. I am not sure whether it still quite does the job. On that count, we will support the bill and I wait with bated breath to hear the minister's response.

HON MATT BENSON-LIDHOLM (Agricultural) [4.11 pm]: I rise, as my learned colleague Hon Kate Doust did, to very much support the Workers' Compensation and Injury Management Amendment (Jockeys) Bill 2012. I need to put on record right from the very outset that, as some members know, I have had quite a significant involvement in harness racing for about the last 30 years. Not that that necessarily gives me any great qualification to talk specifically about jockeys, but one of the issues I have pertains to the fact that reinspersons are not mentioned in this legislation. I will give some reason for my concern in a minute or two. Certainly, I have had quite a significant family involvement in the horseracing industry. I have a young nephew Malcolm who has done a lot of track work in his day. He may well have gone further in the industry but for the fact that even though he started very young—like a lot of these young fellows, he started at 13 or 14 years of age working in stables—he was not to know that by the time he was 18, 19 or 20 he would be about six-foot-four or six-foot-five and probably weigh about 15 stone. Maybe he did not quite weigh that at that time, but that is certainly an issue for a lot of these people.

Perhaps it is also worth noting that in this day and age there are a lot of young women who have taken to race riding. Hon Kate Doust mentioned one of them. I think her name is Kyra Yuill and she is the young female jockey who was injured significantly not all that long ago. I think she is still an apprentice and I have a bit of an issue there as well, because there have been many apprentices over the years. There was a well-known case in Victoria of a jockey by the name of Darren Gauci who as an apprentice finished at the very top of the Victorian Metropolitan Apprentices' Premiership. If he had significantly injured himself on the eve of becoming a professional jockey—I know it would have been dreadful luck—there would have been implications in that sort of thing. I think Hon Kate Doust made a good point about dates in the legislation when she said that we would like it predated perhaps to 1 August.

Over the years, I certainly got to know a number of jockeys and trainers, given that I spent a lot of my early life around Ascot Racecourse, around where I was brought up, and I got to know the impact that death and significant injury causes to families. I know the Oliver family very well, so obviously I knew Ray Oliver, who died maybe 35-plus years ago, I am not sure whether it was at the Kalgoorlie Cup, but certainly it was part of the Kalgoorlie race round. In that respect and on account of the sort of people I know who have been injured and have even lost their lives, I think this is a very timely piece of legislation, because it shores up the financial existence of the people and family left behind when a jockey has sadly passed away.

I have a number of questions and I am mindful of the time, but I will certainly continue my remarks after question time. One of the issues I have, as I have already indicated, is that of reinsmen. The explanatory memorandum states "reinsmen" but I am sure Parliamentary Counsel meant reinspersons. It states —

The changes only affect licensed jockeys and do not impact on current arrangements for track work riders, apprentice jockeys or harness reinsmen.

Debate interrupted, pursuant to standing orders.

[Continued on page 6273.]

Extract from *Hansard*

[COUNCIL — Thursday, 20 September 2012]

p6253b-6263a

Hon Kate Doust; Hon Nick Goiran; Deputy President; Hon Robin Chapple; Hon Matt Benson-Lidholm

Sitting suspended from 4.15 to 4.30 pm