

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

## **EXPLANATORY MEMORANDUM**

### **OVERVIEW**

The purpose of this Bill is to:

- align the rate of weekly compensation paid to licensed jockeys with their pre injury average weekly earnings on the same basis as other non-award workers under the *Workers' Compensation and Injury Management Act 1981* (the Act).
- clarify the scope of the workers' compensation insurance obligation between Racing and Wagering Western Australia (RWVA) and licensed trainers regarding work done by jockeys for trainers at unlicensed facilities.

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

### **CLAUSE 1. SHORT TITLE**

Sets out the name of the Act.

### **CLAUSE 2. COMMENCEMENT**

Provides that the Act is to come into operation as follows:

- (a) sections 1 and 2 — on the day on which the Act receives the Royal Assent.
- (b) the rest of the Act — on a day fixed by proclamation.

### **CLAUSE 3. ACT AMENDED**

Sets out the name of the Act to be amended.

### **CLAUSE 4. SECTION 11A REPLACED**

#### **Section 11A(1)**

Defines terms by reference to the *Racing and Wagering Western Australia Act 2003* which is the statute that provides for the licensing of jockeys, trainers, racing clubs and facilities.

#### **Section 11A(2)**

Section 11A(2) in substance replicates the current deeming provision to ensure jockeys are covered under the Act while racing, engaged in riding work and carrying

out the usual duties of a jockey. The redrafted provision does not limit the scope of the deeming arrangement that currently exists.

Paragraphs (b) and (c) distinguish between riding work and duties that are carried out for trainers at licensed facilities and those that are not carried out at licensed facilities. This distinction is made as section 11A(3) clarifies who is liable as an employer in each of these scenarios.

The Bill removes the link to the stable foremen award rate currently found in section 11A(2) of the Act.

Weekly compensation payments for jockeys will be calculated based on their pre injury average earnings on the same basis as other workers whose earnings are not prescribed by an industrial award. Pre injury earnings are averaged over the 12 months prior to the injury (or lesser period if employed less than 12 months) and is inclusive of income from any concurrent employment.

No express amendment is needed to effect this change as schedule 1 clause 11(2) of the Act already provides for the methodology for calculating workers' pre-injury average weekly earnings (paragraph (c) of the definition of "Amount B").

### **Section 11A(3)**

Clarifies the scope of the workers' compensation insurance obligation between Racing and Wagering Western Australia and licensed trainers regarding work done by jockeys for trainers at unlicensed facilities.

Racing and Wagering Western Australia will continue to be 'deemed' the employer of licensed jockeys while the jockey is racing, engaged in riding work or carrying out the usual duties of a jockey for a trainer at any licensed facility (such as a licensed racecourse, training track or trial track).

However where a jockey is performing work for a trainer on any unlicensed facility (such as work on a trainer's own premises or at the beach) the jockey will be covered by the trainer's workers' compensation policy.

Trainers are already required to hold workers' compensation insurance for track work riders and other workers and this cover will extend to licensed jockeys if performing work for the trainer at any unlicensed facility.

### **CLAUSE 5. SECTION 159 AMENDED**

Clarifies that while RWWA is deemed the employer of licensed jockeys for workers' compensation entitlements it is not required to insure under the Act for common law damages payable to jockeys. RWWA has a public liability policy for this risk.

### **CLAUSE 6. SCHEDULE 1 AMENDED**

A transitional provision that preserves the stable foremen award rate for determining weekly compensation payments for jockeys with injuries that occur before the amendment bill comes into operation. This ensures the amendments are not retrospective.