

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

*Second Reading*

Resumed from 20 September.

**HON MATT BENSON-LIDHOLM (Agricultural)** [3.12 pm]: I will not take too long summing up the various points I made last week about the Workers' Compensation and Injury Management Amendment (Jockeys) Bill 2012. Over the weekend I contacted Craig Staples from the Western Australian Jockey's Association about some of the issues that jockeys have with the industry in which they work. According to Mr Staples and some of the research I have conducted over the past week or so, apart from those who have been left with paraplegia and quadriplegia because of accidents that have happened on racecourses, there have been some 300 Australian deaths. I did mention the injuries suffered by a very prominent Western Australian jockey, Mr Rod Kemp, some 25 to 30 years ago. I referred to him as having had head injuries, but the injuries that Rod Kemp suffered were mainly in the throat and neck area where he suffered significant damage. I just wanted to clarify that. I share concerns similar to those of Hon Max Trenorden. I do not think there were any other Legislative Council members on the Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts. One of the recommendations the joint standing committee sums up the thrust of my argument about this bill. The committee made a number of findings and recommendations, but there are two in particular to which I draw the minister's attention. In some small way this may assist in reducing the incidence of injuries that jockeys suffer in the future.

Finding 43 can be found on page 112. It states that there is overwhelming support for a dedicated racing industry infrastructure fund. There are two recommendations that apply to this bill. Recommendation 26 states that a dedicated racing industry infrastructure fund be established and administered by Racing and Wagering WA. The reason for that particular recommendation is purely and simply to improve jockeys' workplace. As all members would appreciate, not all tracks across Western Australia—which is where jockeys earn their living—have the same level of safety and, for want of a better word, finesse. On some racetracks jockeys suffer significant injuries rather frequently.

**Hon Simon O'Brien:** Can you repeat the name of the report?

**Hon MATT BENSON-LIDHOLM:** Certainly, minister. It is the second report published in 2010 by the Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts. The report is headed "Inquiry into the Racing and Wagering Western Australia Acts". It was presented by Mr John McGrath and Hon Alyssa Hayden.

The other recommendation, which is similar to the first one, was that the Racing and Wagering Western Australia Act 2003 be amended to establish a special purpose account for the infrastructure fund. Obviously the committee of which I and Hon Max Trenorden were a part made the point that safety, which is an imperative in this industry, is of paramount importance. From my studies, I do not believe that that situation, by way of any Totalisator Agency Board taxation deduction, has occurred. I put it to the minister that that is a fairly relevant issue on which he could comment.

During my discussions with Craig Staples he made the point that he was quite happy with the general thrust of the bill. But the issue of paramount importance to him—again, I will ask the minister to clarify this for the purpose of the house—is that this bill will have application only when jockeys suffer an injury in a licensed capacity. I may well be mistaken. I am trying to relay what the president of the Western Australian Jockey's Association said to me. Does that mean that beach work, stable work and some of issues I raised last week are not part of the scheme that has been put before us?

In summary, there are many issues associated with the implementation of a better scheme that will help promote jockeys' long-term quality of life. The issue I have is that this bill is playing catch-up. What I am alluding to is that we should try to stop these incidents from happening in the first place. Certainly Craig Staples commended the government for taking on board this type of legislation. But it has taken 10 years for any government to do something. Given that it has taken 10 years, perhaps we need to take a step or two further to look at covering jockeys in every respect. I have been a former teacher administrator in the state education system, and if I was out with a group of students or going from one particular place of employment to another, I was covered. Why cannot jockeys be covered in a similar context? That is the question I put to the minister. Craig Staples was particularly concerned about how the figure of \$710-plus has been determined. One of the issues he has—this perhaps relates to his charge of looking after Western Australian jockeys—is that in certain isolated instances Western Australian jockeys might ride for extra cash. The capacity to determine a jockey's income over the past two, three or four years could be difficult if there is no taxable income statement.

**Hon Simon O'Brien:** How dare you impugn the reputation of jockeys.

**Hon MATT BENSON-LIDHOLM:** I put it to the minister that that is the comment that was made to me. Perhaps there needs to be some genuine change in the management of the industry. How the government would go about doing that at this particular point in time, I am not sure. On that note, I look forward to the committee stage.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce)** [3.18 pm] — in reply: I thank members for their contribution and for their support of the second reading. A lot of questions have been asked; I will attempt to answer them briefly but fairly.

Hon Kate Doust, the lead speaker for the opposition, raised a number of matters. She asked if there is a schedule describing the types of injuries for which jockeys will be covered. No, there is not. The current definition of "injury" in the Workers' Compensation Injury Management Act 1981 is comprehensive, and it will continue to apply to jockeys and, indeed, all workers. That is the whole point of this exercise. The definition covers any injury or disease jockeys may suffer in the course of their work. The type of work that jockeys are covered for is also comprehensive and includes racing, riding work and duties undertaken for a trainer. Jockeys are currently covered and will continue to be covered for races, track work, trials, working in stables, attending to horses and bush and beach work. Hon Kate Doust is not the only member who raised the issue of cover for interstate and overseas races. Robin Chapple, I think, also asked the question, and a variation of it was asked by Hon Matt Benson-Lidholm just now. The Western Australian Jockey's Association has advised that there is, in fact, limited interstate and overseas racing by Western Australian jockeys. In part, that is due to cost and travel time. Nevertheless, WA licensed jockeys are covered if they usually work or are based in WA. Temporary races interstate and overseas do not affect the availability of compensation so long as the jockey is working for a WA licensed trainer. Freelance jockeys injured interstate and working for interstate trainers, however, will be covered in the state in which that trainer is licensed. Freelance jockeys working overseas for international trainers are not covered by this statutory compensation scheme. Typically, personal accident insurance policies would cover this type of arrangement.

It is interesting to talk to representatives of the jockey fraternity and find out how their world works. One of the ways jockeys currently try to address the problems this bill seeks to address is to take out their own personal insurance for income protection, additional injury cover and the like. Hon Kate Doust asked about the commencement date of the operation of the bill. She asked, not completely seriously, if we would make it from the horses' birthday.

**Hon Kate Doust:** I am serious, not on that point but about making it 1 August.

**Hon SIMON O'BRIEN:** She suggested that it be, perhaps, 1 August. An amendment is on the notice paper for that, but that amendment will not be supported. Once we are in the Committee of the Whole, I will give the reasons it should not be supported and we will come to that in due course. It is not only horses that share a common birthday; most members of the Legislative Council, of course, share the common birthday of 22 May.

**Hon Kate Doust:** It's not the same.

**Hon SIMON O'BRIEN:** Although, of course, some very special ones have a different birthday. Hon Nick Goiran made a helpful contribution and I thank him for that. Hon Robin Chapple raised a number of questions, for example: how is the calculation of earnings done when a jockey has been injured? Basically, pre-injury earnings will be those from the previous 12 months prior to the injury. They will include an average income from any other concurrent employment outside jockey activities. Obviously, the 12 months will be a lesser period if they have been employed or working in jockey activities for less than 12 months. It will be the average of whatever that period is for a week. The cap on weekly payments will still apply, and the step down from week 14 will also apply, as it does for other workers. To get a bit hypothetical—it is all right, I will stick with Hon Robin Chapple in answering the next part of his question—the earnings of a jockey who resumes work after a racing accident and is injured again will be based on the period he or she has been racing; that is, the period in which the jockey was in receipt of compensation is not included. That is the same as for any other non-award worker. Mind you, given that the compensation payments are meant to be an average, we will probably find it will be much the same whether it is the first, second or intervening period of compensation. Those earnings from racing and any concurrent employment to be taken into consideration for that 12-month period will include income from interstate or overseas races. I have already addressed the member's question about the state of connection for jockeys riding interstate where WA licensed jockeys, I think almost always, have a connection to WA and therefore are compensated in WA.

Hon Matt Benson-Lidholm made a very interesting lengthy contribution. I did not know he was actively engaged in harness racing or took such an interest in it. In respect of that, I can advise him that the bill will affect only licensed jockeys and will not apply to arrangements for harness reinsmen, track-work riders or apprentice

jockeys. I am advised that harness reinsmen are not covered under the Worker's Compensation Injury Management Act 1981 but are covered under a separate personal accident policy. I am advised that, unlike jockeys who race thoroughbreds as a professional activity, those in harness racing are generally pursuing it as a hobby. I hope my repeating that advice does not upset anyone who derives their professional income from harness racing. I think the comment is a generality.

**Hon Matt Benson-Lidholm** interjected.

**Hon SIMON O'BRIEN:** Yes, but anyway, it has nothing to do with the bill before us today. The member also asked about compensation for significant injuries, so I advise as follows. The workers' compensation scheme already provides a range of entitlements for jockeys with significant injuries, and these apply to all workers suffering work-related injuries. Weekly payments of compensation are available, which will continue while the jockey has a total or partial incapacity for work subject to the prescribed limits that apply to all workers. Like other workers, jockeys may access entitlements for medical and related expenses, vocational rehabilitation and lump-sum payments for permanent impairment. It is likely that jockeys suffering catastrophic injuries will be eligible for maximum statutory entitlements, which may be paid via a lump sum settlement to finalise the claim. Western Australia also allows certain workers to access common law damages, which is a system that co-exists with this statutory scheme. Indeed, we looked at that when I introduced a more substantial workers' compensation bill through the house some little time ago.

In response to a series of questions Hon Matt Benson-Lidholm asked, I can tell him that the calculation of earnings in relation to jockeys will not be based on future earnings capacity but on the pre-injury average weekly earnings. That is the same for any other worker. Previous earnings as an apprentice for new jockeys, however, would not be factored in as it is not income associated with being a professional licensed jockey. That would work in favour of the jockey who presumably would be paid a lot more than an apprentice.

**Hon Matt Benson-Lidholm:** I understand where you're coming from, but is it not true also that apprentices do have occasional access to moneys that have been set aside for them during their apprenticeship that they can then utilise on becoming a fully-fledged jockey—is that not the case?

**Hon SIMON O'BRIEN:** Moneys for what purpose?

**Hon Matt Benson-Lidholm:** Whatever—it is their money. But the money is put aside as an apprentice in some sort of trust capacity.

**Hon SIMON O'BRIEN:** A number of questions have been raised, which are all good questions, that are probably the prerogative of another minister and this would be one of them. I am not the minister with responsibility for Racing and Wagering Western Australia; I am here only in my capacity as the minister with responsibility for the workers' compensation scheme. Therefore, I am sorry; I cannot advise the member about that particular fund.

**Hon Max Trenorden:** The member's right; that is the case.

**Hon SIMON O'BRIEN:** However, my colleague Hon Max Trenorden gives us reliable advice that the member is right! I hope the member takes some comfort from that.

Hon Matt Benson-Lidholm raised the question of dual licensing. Racing and Wagering Western Australia is not aware of any licensed jockey who is also licensed as a harness driver, although some trainers have dual licences.

I have already covered questions about the ongoing entitlement of jockeys and the status of foreign and eastern states' riders, although I can add a little more to the latter. Foreign jockeys working in WA for a WA-licensed trainer will be compensated in this state. However, if they race for an overseas trainer, that jockey is covered by their own personal accident insurance arrangements. Interstate jockeys in one-off rides or carnivals in WA are likely to be compensated in the state in which they usually work, but it depends on whether the jockey is working for a WA trainer or an interstate trainer.

The question was asked: will the stable foreman rate continue as a minimum payment for low-income jockeys? No, it will not. All jockeys injured after the commencement date will be compensated based on their pre-injury average weekly earnings. What is wrong with the current fixed rate method is that it has the effect of undercompensating individuals earning above the rate and overcompensating those who earn below the rate. Jockeys earning less than the stable foreman award benefit financially from being on workers' compensation. That situation is unique to jockeys and, of course, it has the effect of blunting the incentive to return to work. The removal of the link to the stable foreman award will not adversely affect seasonal jockeys, or jockeys who receive low income from racing and rely on income from other employment because earnings from concurrent employment will be included as part of the pre-injury earnings.

Just to conclude with some other questions Hon Matt Benson-Lidholm asked, jockeys are covered for accidents occurring in stables. The member also asked about the infrastructure fund and referred to the report of the Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts. That is really a matter for Racing and Wagering WA rather than for this minister. The member also asked about the calculation, I think, of the \$710. Was the member referring to the stable foreman award?

**Hon Matt Benson-Lidholm:** That is the stable foreman award, yes—the \$710.

**Hon SIMON O'BRIEN:** It was around that figure. The member referred in passing to calculations for the cash economy. I think in providing evidence of earnings for insurance purposes, the jockey in question would have to provide proof of earnings. If someone participates in a cash economy, this is how it might actually be counterproductive from their own personal financial viewpoint.

I will tell a story, Hon Matt Benson-Lidholm, about when I was the Minister for Transport and had the pleasure to be in charge of the taxi licensing system. That joy has now devolved to another colleague, so I can talk about it. Every six months or so —

**Hon Matt Benson-Lidholm:** I trust that's not why it's a story!

**Hon SIMON O'BRIEN:** It is not that good a story, but I will tell it anyway because it is relevant to the member's point.

Every six months or so, the Minister for Transport is required to sign off, having received advice, on the tariff and related rates that will apply to taxis. With the advice of the department and the Taxi Industry Board, which I revived, a number of sources of information are used to try to strike that right balance between making sure that taxidrivers and operators have a reasonable income to ensure that it is a viable industry and people are participating in it, and the need to make sure that taxi patrons are not priced out of the market.

**The PRESIDENT:** Minister, I am hoping to hear what relevance this has to the bill on jockeys.

**Hon SIMON O'BRIEN:** You will be delighted to find out in a moment, Mr President, because it was Hon Matt Benson-Lidholm—indeed, your deputy—who raised this question of the cash economy, although not in that capacity.

**Hon Matt Benson-Lidholm:** Not taxis anyway, minister; you're drawing a long bow!

**Hon SIMON O'BRIEN:** All right, I will draw my remarks to a conclusion because they are only peripheral!

**Hon Matt Benson-Lidholm:** I think he agrees with you, Mr President!

**Hon SIMON O'BRIEN:** Jockeys catch taxis!

Hon Matt Benson-Lidholm will be interested to know that as minister I set out to explore this a bit more. We had a review into the remuneration of taxidrivers, their income, to try to put into context what is a liveable outcome. Very few taxidrivers participated—I think it was a miserable number; double figures, if that—and the average gross daily income of a taxidriver at that time was seen as being \$130. I certainly would not operate a taxi if that was the daily income because it would probably cost more than that for fuel. That shows the problems of what I suspect is, in part, a cash economy. Mr President, this is the bit that is actually relevant: those who participate in a cash economy in the taxi game would also suffer from the same disadvantage if they were to do it in any other activity, including operating in the racing industry. Although they might gain the benefits of cash in the hand, when we calculate compensation, or superannuation for that matter, they would tend to miss out. That is my response to that question and I apologise for Hon Matt Benson-Lidholm leading me slightly off the topic, but I thank him and other members for their support of the second reading.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chair of Committees (Hon Col Holt) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

**Clause 1: Short title —**

**Hon ROBIN CHAPPLE:** I want to ask the minister a couple of questions. Obviously, the Workers' Compensation and Injury Management Amendment (Jockeys) Act 2012 will provide compensation for jockeys. What happens if the jockey—most senior jockeys are—is currently privately insured; do they continue with their private insurance or will they automatically fall under this legislation? Further to that, what does the minister

think will be the uptake of this scheme, as opposed to private insurance? I have a reason for asking that, which I will come to in a minute.

**Hon SIMON O'BRIEN:** The question of whether jockeys would retain their own insurance arrangements is, of course, a matter for them. I am sure there are some very successful jockeys with a high earning capacity, and it would certainly be advisable for them to do so. In the case of a jockey becoming injured, they will have both forms of insurance available to them. Firstly, they will have the workers' compensation insurance we are delivering via the act, because it is compulsory. If perchance—I think it is likely—their further private cover provided extra payment, that would be for any amount above and beyond what was already paid by what I will call our scheme, I think Hon Robin Chapple knows what I mean, up to whatever maximum a week or what other maxima might be specified by the terms of their own private policy.

**Hon ROBIN CHAPPLE:** In that regard, given that in the 2009–10 assessment only 18 per cent of jockeys earned greater than the cap, will this not basically just support the top end of the jockey fraternity who are, to a large extent, already privately insured?

**Hon SIMON O'BRIEN:** There were, believe it or not, quite a few questions rolled up in that. I think Hon Robin Chapple is referring to the 18 per cent figure shown at table 1 on page 7 of the WorkCover WA review of the weekly compensation rate for jockeys.

**Hon Robin Chapple:** That is correct.

**Hon SIMON O'BRIEN:** As with any statistical figure, it can be interpreted a number of ways. For example, if Hon Robin Chapple goes to table 2 and looks at the workers' compensation claims by earnings, he will find that those in the category of receiving greater than the cap in payment are 28 per cent of the total claims. That is hardly surprising, is it?

**Hon Robin Chapple:** No.

**Hon SIMON O'BRIEN:** It is hardly surprising that the more riding someone does as professional jockey, the more exposed to risk they are, and, not surprisingly, the more claims they make.

The other thing, too, when looking at this statistically—this information is in those tables—is that there were 96 licensed jockeys in 2009–10. For statistical purposes, that is a pretty small pool, and it is interesting, is it not, that when we look at the total claims reported in 2009–2010, it is 39 per cent. I do not know how many members of Parliament have —

**Hon Robin Chapple:** We have had a pretty good run recently!

**Hon SIMON O'BRIEN:** — a work-preventing injury, but that strikes me as a pretty high rate of being injured in the course of work; obviously, a couple of those are within the same statistical period. But the central part of the member's question was: is it not the case that this is skewed for those at the higher end of the earning market who perhaps do not—I think this was implied in the member's question—really deserve the support as much as those on the lower income scale?

**Hon Robin Chapple:** Yes.

**Hon SIMON O'BRIEN:** Actually, quite a few will be supported by this. The member made the observation that if 18 per cent are earning above the cap, then the member is concerned about the other —

**Hon Robin Chapple:** In essence, the 66 per cent.

**Hon SIMON O'BRIEN:** — 66 per cent who are below the stable foreman award. At the moment, they can get the stable foreman award of \$710 a week. This legislation will make the cap available to all workers, which is \$2 351.80 a week. That is a measurable additional benefit. In future we will say, "This is a benefit available to everyone earning up to \$2 350 a week", and I think that is a very good thing. The other thing I point out, of course, is that in the future the average earnings will not be related to a fixed stable foreman's wage; they will be whatever they get. If someone suffers an injury while working as a jockey, they will also have taken into account the lost income from their other job as a painter or whatever. It is a win-win situation all the way around.

**Hon ROBIN CHAPPLE:** As a matter of clarification, I thought it was quite clear that someone earning less than that of the stable foreman award would not get compensation or would be compensated only to the level of the stable foreman award. Therefore, someone earning under that figure would be able to get a compensation level that could be quite in excess of the stable foreman award.

**Hon Simon O'Brien:** Yes, up to \$2 351 a week.

**Hon ROBIN CHAPPLE:** Okay; no worries.

**Hon SIMON O'BRIEN:** Just to confirm that formally, the stable foreman wage benchmark has been thrown out the window with this bill; so forget all about that in the future. If the member thinks about it, the chances are that someone earning less than \$710 a week on average over 12 months would not be doing much jockeying, or if they were, they were not necessarily good at it.

**Hon Robin Chapple:** Or successful.

**Hon SIMON O'BRIEN:** Or successful. However, it means that they probably have another job. They might even have a full-time job in some other area. Of course now, if the injury occurs when they are riding, they will be covered for all their sources of income.

**Hon MATT BENSON-LIDHOLM:** I seek a few clarifications of clause 1 from the minister. The minister made the point in his second reading address that he had sought some clarification of dual licensing and that he had dismissed it, because he said something to the effect that it does not prevail now and is not relevant. I want to make the point that I did a bit of a check during Hon Robin Chapple's commentary and I am led to believe that it has occurred; and because it has occurred I do not know of any legislation through Racing and Wagering Western Australia that would preclude that happening again. I just make that point.

**Hon Simon O'Brien:** Being dual licensed?

**Hon MATT BENSON-LIDHOLM:** A dual licence; that is, a jockey who is also licensed as a reinsperson.

**Hon Simon O'Brien:** Yes.

**Hon MATT BENSON-LIDHOLM:** I understood from the minister's response that he dismissed that because he was informed that it is not currently the situation. However, there is someone—I will not mention the person's name—to whom it applied and I believe that person is still there.

**Hon Simon O'Brien:** How does that affect this bill?

**Hon MATT BENSON-LIDHOLM:** It was a question I asked. I just wanted to make the point simply because I believe that there can be some financial implications for a person who is injured in a stable perhaps. That is where I am coming from. I currently have a horse trainer who has a galloper in his stable. He is licensed to train gallopers and he also has standard-bred horses. There are therefore implications for that person. I just wanted to make that point. The fact of the matter, though, and what I am saying to the minister is that there are still jockeys—the minister is not interested necessarily in reinspersons through this bill—who would work that horse out of that stable and who may well be put in a compromising situation if the place is licensed. That is the point I am making. What I am saying is that to dismiss it is folly. That is all I am saying.

I make the point that I have also received a response from other people in the industry to the point the minister made about reinspersons being treated as hobby people. I will give the minister an example of a particular reinsperson, which is all he does. The gentleman's name is Morgan Woodley. To say that Morgan Woodley is simply a hobby reinsperson—ideally, one would need to look at his taxable income to figure it out—is not appropriate in this particular context.

I also made a point about an infrastructure fund. I still believe that the government needs to send a message from its side of the house if it intends to improve the lot of jockeys—I am not referring explicitly to the bill but to the issue of infrastructure funding—so that the courses these particular jockeys operate on are improved. The minister's response was that it is not the responsibility of the minister but, rather, a responsibility of Racing and Wagering. I put it to the minister—perhaps I need to speak to the Minister for Racing and Gaming about it—that the minister would very much appreciate that taxation is a government issue.

I make those three points, but I do not want to make any significant contribution, apart from stating what may well be the obvious in this respect. However, I needed to put on record those three comments, particularly the one about dual licensing because it has happened and it can happen.

**Hon SIMON O'BRIEN:** There is probably not much point getting het-up about it, so I will not. The point is that if a trainer has a dual licence—I understand some trainers have dual licences—they will be connected to this bill in their capacity as an employer. One of the things that this here bill seeks to correct is to clarify a jockey's position as an employee, thereby giving them access to the workers' compensation arrangements that other workers take for granted. It is in fact, therefore, an inclusive thing and Hon Matt Benson-Lidholm can be reassured about that.

I do not have any cold water to pour on the report that Hon Matt Benson-Lidholm referred to on suggestions for infrastructure funds and I am not dismissive of it. I am sure it was a very good report that he referred to. The fact is that it has nothing to do with this bill. I am therefore dismissive only insofar as saying that it is not something that is up for us to deal with now. Indeed, it is correctly under the purview of the Minister for Racing and Gaming, or whichever other minister of government has or has had the responsibility to respond to that

committee's report. I am therefore dismissive in the sense that I do not want to be rebuked by the Chair for going into matters that are not part of this bill. However, I am certainly not dismissive of the views of the committee or its intentions to make for a better working environment for jockeys and others.

**Clause put and passed.**

**Clause 2: Commencement —**

**Hon KATE DOUST:** I move —

Page 2, line 8 — To insert after “proclamation” —

, which may be a day prior to the day on which the proclamation fixing the day is published in the *Gazette*

I canvassed this amendment during the second reading debate and the minister said in his reply that I was joking about taking the date back to the horses' birthday. I might come across as sounding trite on that matter but I was quite serious about —

**Hon Simon O'Brien:** Not trite. I thought it was a very good line.

**Hon KATE DOUST:** Okay. However, I was quite serious about making this bill retrospective on the basis that, as I canvassed during my second reading contribution, this legislation has taken a considerable time to reach this chamber, for whatever reason, and it is a significant change for those jockeys. I understand that there was some concern that some jockeys would be caught out by this bill. I understand that just prior to the reading into this chamber of this bill there was quite a significant incident for a senior jockey. Unless this bill is made retrospective, that jockey will be caught under the old scheme of arrangements and not picked up under the new scheme. I use that as an example. It is unfortunate that it has happened, but there is a view around that it would demonstrate good faith on the part of the government. Although 1 August may be all horses' birthday, it is also a significant date in the annual diary of the racing industry—it is the start date of the season. It has been put to me that it would be highly appropriate for this bill to commence on that date. It is a symbolic date for the industry. I do not know whether this was an issue considered during discussions with the interested parties or whether it was an issue canvassed with the minister as it went through the processes, but I feel obliged to move this proposed amendment. I note from the minister's reply that he will not support this amendment. I look forward to an explanation of why the government does not see fit to afford that accommodation to the industry.

**Hon SIMON O'BRIEN:** The honourable member will be glad to know that we have examined this question of commencement date and potential retrospectivity with industry and other stakeholders. Even though I have already indicated we will not support the proposed amendment, I also said that was because I anticipated this discussion during committee stage. I most certainly have some advice for the member about what we have looked at. Hon Kate Doust might well form the same view that government arrived at. The first thing I ask members to consider is the fundamental principle that legislation should apply prospectively, unless there are exceptional circumstances and retrospectivity is warranted. I do not believe there are any exceptional circumstances in this bill. We have a status quo that is different from everyone else. It is out of step with other workers' arrangements and needs to be brought into sync, and that is what this bill will do. But there are no exceptional circumstances.

There have been other legislative amendments to workers' compensation entitlements. They have all operated prospectively, including those enacted by the Labor government back in 2004. WorkCover WA—again, I speak very highly of WorkCover WA as an agency—has been consulted extensively on this bill. I understand that all parties, including the WA Jockeys' Association, accept that the bill will apply prospectively. The day I read this bill in a couple of weeks ago, I was with the president of the Australian Jockeys' Association here in Western Australia and the senior workplace safety representative at a national level of the Australian Jockeys' Association. They were able to assure me in person that they were happy with the bill's aspects including prospectivity. Hon Robin Chapple will be interested to know that one part of the discussion covered personal insurance or top-up cover that many professional jockeys take out themselves. The president of the Jockeys' Association actually said that members had asked him when this bill would start so that they could drop their private insurance arrangements. I emphasised to him: “Tell them not to drop their private arrangements until this is all in place.” That does not happen when the bill is read in, or it passes this house, or a number of other milestones. “Leave your arrangements in place” is the message that has gone out to those 96 jockeys, or however many it is, “until you're told that it is safe to do so.”

A couple of other things about retrospectivity: in this case it would result in an unfunded liability for Racing and Wagering Western Australia as the premium it pays its insurers for licensed jockeys is based on current

legislative arrangements. RWWA is not insured, as I understand, for the extra liability that would accrue if these arrangements were retrospective. That is a serious argument against making the elements retrospective.

There could also be some pretty serious technical issues regarding retrospective adjustment of jockeys' weekly compensation payments for events that happened in the past. For example, if a jockey was paid sometime between 1 August and the date of commencement, how do we go back and make a reassessment? If they were paid the foreman's award, how do we go back and calculate the previous 12 months' earnings and so on? There are serious technical difficulties involved. We would also have to make decisions about how far back to apply the retrospective clause. With the greatest respect, 1 August might seem an appropriate date as any, because it is a date with some significance to the horse-racing fraternity but, honestly, it is purely arbitrary. Why not 1 July, the first day of the financial year? Why not 1 January? Indeed, why not 1 August last year, or the year before, or the year before that? These are the sorts of questions that arise when applying a retrospective element. Again, they raise all the other problems that I have already alluded to, such as unfunded liability and technical issues.

If 1 August is an important start date, it might be that the next 1 August should be the start date, if we have a problem—and we do—with retrospectivity. My aim would be to get this through as quickly as we can to get it into action. That way, the benefits to all jockeys can start to accrue without delay. I am seriously advising the Committee of the Whole House against retrospectivity. I could go on. There are other problems that would be associated with it. All parties concerned accept that prospectivity is what should apply. We have to ensure that we do not visit any retrospective liabilities upon employers—that is, trainers. When one stacks the ledger, there is a clear case for the house to decide not to accept this proposed amendment. I recognise that it is a worthy one to put up for discussion, and I thank the honourable member for doing that.

**Hon KATE DOUST:** I thank the minister for that detailed explanation. I imagine proposed sections 1 and 2 would come in fairly soon after this bill goes through all of its processes in both houses. However, clause 2(b) states that the rest of the act would come into operation on a day fixed by proclamation. Given this bill still has to go through the other chamber at some point, hopefully in the next few weeks, what sort of time frame would the minister anticipate proclamation, after the bill is third read in the other place? Are we talking about a matter of weeks before the remainder of this bill is proclaimed, or are we talking about possibly into 2013?

**Hon SIMON O'BRIEN:** My advice is that there are no changes to regulations or other sorts of things that seem to take so distractingly long. Therefore, once this bill is passed through another place, it can be sent to the Governor for royal assent, virtually forthwith, and the date for proclamation could follow soon after, dependent I think upon the further consultation necessary with industry—just to make sure that everyone is ready to go on a particular date. I want it to be an early date. I am hoping, from where we sit now, it is weeks not months. I have even got a date in mind, but it would be remiss of me to put that on the record. I hope we could be weeks away.

**Amendment put and negatived.**

**Clause put and passed.**

**Clauses 3 to 6 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and transmitted to the Assembly.