



RACING AND WAGERING WESTERN AUSTRALIA

ACCC Draft Notice Dated 5th November 2007

Response to Pre-Decision Conference 11 October 2007

Racing and Wagering Western Australia (RWWA) wishes to thank the Deputy Chair ACCC and Director – Adjudication for their time and effort in preparing and attending this conference. RWWA felt the conference was necessary to voice its involvement and outlay the benefits of making such a scheme compulsory. It was also good to hear views from other parties concerned with this matter and to provide our response to concerns raised.

RWWA's aim is to provide a cost effective solution to the industry that is allocated in a fair and equitable method to ensure that all employees are appropriately covered for workers compensation insurance. In addition, promote OSH and risk management initiatives to ensure frameworks are in place to minimise claims, and for a mechanism of injury management and return to work initiatives.

To enable a scheme to work efficiently and accurately, it must be compulsory amongst all trainers. A typical example is that a trackwork rider can work for multiple trainers during a track work session. Should an incident occur during the session, there is no confusion as to which insurance policy would respond if all trainers are within one scheme, and provided that all trainers have appropriate insurance cover.

WorkCover were approached on the issue of obtaining workers compensation cover specifically for trackwork riders. Initial indications from WorkCover were that trainer's employees already have appropriate cover under the Western Australian Workers Compensation and Injury Management Act, therefore no changes would be considered for trackwork riders. This is provided the trainer holds a current workers compensation policy and declares the wages paid to the trackwork rider.

To overcome the "high cost" to trainers, RWWA has several options as advised by insurance brokers, Jardine Lloyd Thompson (JLT), namely:

1. Apply to WorkCover for a self insurance licence and run a scheme similar to Racing NSW.
2. Apply under section 160 for a mutual arrangement similar to a local govt licence, embracing all councils as one insured.
3. Open market scheme, where an insurer runs the scheme and RWWA passes on premiums.

The first two options would require WorkCover approval and may take time to approve, if approval is granted at all, require strict reporting and other compliance, requires financial guarantees and incur a significant administration and claims management cost. It is not considered that options 1 or 2 are viable options.

There are essentially five (5) workers compensation underwriters (excluding niche underwriters such as Catholic Church Insurance, Wesfarmers). Our insurance broker JLT will invite each of the five (5) to tender terms. Due, however, to the nature of the industry we can anticipate that two (2) will participate. As policies are standardised and all insurers in general have effective claims handling facilities the final selection will be determined by price.

Items we wish to re-enforce in our final submission include OSH, risk and injury management, misconception of cover, allocation of premiums, exclusion from scheme in special circumstances and Trainers' association membership.

1. OSH Risk and Injury Management

Currently the racing industry in Western Australia does not have any recognised standards in Occupational Safety, Health or Injury Management when compared to the NSW's compulsory scheme.

In comparison, the requirement for Occupational Safety and Health in Western Australia is legislated under the Occupational Safety and Health Act of which requires all employers under section 19 of the Act not to expose employees to workplace hazards.

Similarly under the Western Australian Workers Compensation Act, all employers are required to take out cover to protect their employees in the event of a workplace accident.

With this in mind the current operational methodology in Western Australia on the part of the industry participants is engaging individuals as employees on a job by job basis, remunerated by direct cash payment, with very limited or no statutory records kept.

Under our proposal an Industry Risk Management Code of Practice will be developed with RWWA, the industry participants and the relevant Government Authorities in order to attain basic minimum standards in Occupational Safety and Health.

In addition model guidelines in Injury and Rehabilitation Management with defined industry alternative duties options, will be developed in conjunction with RWWA, the industry participants and the relevant Government Authorities in order to attain basic minimum standards, in the event of an injury to an employee.

The above risk management framework will provide stability and risk improvement in the exposures the industry is facing. The material knock on effect is that it will also provide stability and confidence in the Western Australian insurance market and in turn Government insurance premium rate, which currently stands at \$5.94% for every \$100 in wages declared.

Currently, as previously outlined, there are two (2) insurance markets out of the available five (5) that are willing to participate in underwriting this class of risk in Western Australia.

The reasons provided to RWWA by the current insurance market in terms of their reservation to underwrite this class of business is on the basis of poor claims, inaccurate premium collections due to the under declarations of the cash economy, and limited or no risk management controls.

As outlined in our meeting the market in order to maintain "some" viability in premium in order to pay future claims is charging the base premium, $5.94\% \times 75\% + \text{loading}$, (in some cases the loading can be greater than 200%, is for every \$100 in wages the Insurance bill is $200\% \times 5.94\% = \$11.88\%$ per \$100 in wages declared).

For those market participants who maintain accurate business practices and records, they are being penalised by the current Western Australian insurance market by having to subsidise the Western Australian Workers Compensation scheme, on behalf of the participants who do not participate due to misconceptions as outlined in point 2 below.

2. Misconception of cover

A sole trader or a partnership arrangement in Western Australia, with or without an ABN, is unable to take out workers compensation cover for themselves, in accordance with the Western Australian Workers Compensation and Injury Management Act of 1981, (as amended).

This has led to a misconception amongst a very large number of participants that as they pay for services on an invoice (or other means, namely on a cash basis) a "view "has been formed that workers compensation cover is not necessary in this instance.

However under the Western Australian Workers Compensation and Injury Management Act, if they engage an individual, they are deemed under legislation to be an employer of the individual, even if the individual is engaged on a verbal contract of employment basis and remunerated in cash for a one off job basis, as it relates to the sole traders or partnerships primary purpose of business.

As a consequence no individual engaged on this basis is covered, as there is not effective policy or insurance in place on the part of the participant.

The consequence of this accepted practice is that the individual employee has no protection afforded to them under the Western Australian Workers Compensation Act.

Historical claims in this category have been accepted by the Uninsured Fund of Western Australia as a last resort, which compounds the problem as the Government Gazette rate is under financial stress, in the event of a poor claims accident year.

The knock on effect of the under declarations is that the insurance premium pool does not cater for the cost of claims lodged, for the industry.

3. Premium allocation

Given the basis of the strong cash economy, the scheme will not be collecting traditional wages declarations as this will not solve the current situation of under declaring. The scheme will be based on a base fee payable with the annual licence renewal, and the balance allocated on a user pays system based on a per start basis for all trials and races.

Information on trial and race starts is already collected and stored within the RWWA computer systems. Weekly invoices are issued to trainers for other per start costs such as trial fees, nominations, gallop fees, scratchings, public liability premiums, etc, and the workers compensation per start fee can easily be added to an already existing invoice.

The user pays system is modelled on the Racing NSW scheme which has identified that a trainer with more starts generally has a larger employment base to maintain the amount of horses starting.

Basis of operation – NSW model

Information has been obtained from Racing NSW and it is proposed to adopt this scheme for WA but instead of applying for a self-insurance licence, RWWA will utilize an insurer to manage the scheme.

Using the NSW model, RWWA would generate premiums as follows:

- Base premium – Upfront fee payable by all trainers irrespective of their claims history and stable size. This minimal fee will be included as part of their annual licence renewal.
- Activity premium – A fee per start will vary between Metro, Country and Trials. Trials are more dangerous are charged at a higher rate.
- Adjusted premium - A claims experience formula is applied to trainers with large or multiple claims based on number of starters and claims costs, but not more than 50% of the previous years total workers compensation premium paid.

Depending on the required premium calculated by Jardines and the insurer, the above figures would be adjusted accordingly to fully allocate the total cost to trainers over the period of insurance.

Using an insurer, all claims management is handled by the insurer and RWWA's involvement is to pay an annual premium up-front and recover from trainers over the period of insurance. This is in line with other industry participant insurance policies and requires minimal administration support by RWWA.

The model simulates that the higher the number of starters the trainer has, the larger the employment pool is required. Trainer's who do not start any horses during the year only pay the minimal upfront fee and are adequately covered. The split premium calculation along with claims details is the basis used to calculate insurer premiums; therefore no wage declarations are required from individual trainers.

Based on the NSW model, data extracted from the 2006/2007 annual report shows total workers compensation premium collected amounted to \$7,556,812. This consists of trainers' employees, employees of race clubs, and jockeys. The trainer's employee's component amounted to approximately \$1.8 million collected as follows:

Number of trainers licenced = 1,232		
Flat fee payable with annual licence	(\$250.00 x 1,232)	\$308,000
Number of Metropolitan starts	(9,195 x \$35.00 per start)	\$321,825
Number of Provincial starts	(9,552 x \$26.00 per start)	\$248,352
Number of Country/Other starts	(35,113 x \$13.00 per start)	\$443,807
Number of Trials (estimated as actual data unavailable):		
	(9,000 x \$55.20)	\$496,800
Total Trainers employees' premium cost (approximate)		\$1,818,784

Comparative premium costs to RWWA licensed trainers in Western Australia based on 2007/2008 data, and depending on initial premium calculations provided by insurers, will be as follows:

Number of trainers currently licensed by RWWA	656	
Flat fee payable with annual licence	(\$200.00 x 656)	\$131,200
Number of starts 2007/2008	(21,525 x \$35.00 per start)	\$753,375
Number of Trials	(4,300 x \$55.00)	\$236,500
Total Trainers employees' premium cost (estimated)		\$1,121,075

Rate per start has been illustrated at a flat rate of \$35.00 for all meetings, and will be adjusted accordingly by class (as per NSW) once actual premium numbers are available.

4. Exclusions from scheme

RWWA understands that in certain circumstances a trainer that renews his licence may not have any horses in training for long periods. In most instances, if a trainer has no horses in training, he will only be charged the base fee and not be charged any per start costs. RWWA will review any request for exclusion from the scheme by a trainer on a case by case basis.

5. Trainers Association membership

For the 2007/2008 racing season, currently 656 trainers have renewed their racing licence. Of those 656 trainers, 287 or 43.75% (last year 42%) of those trainers are members of the WA Racing Trainers' Association. Membership is compulsory and trainers are invited to join by checking a tick box on the annual RWWA licence renewal form. Funds are then passed onto the association.

JLT approached the insurance market, insurers and actuaries, to obtain claims data and premium estimates but due to commercial sensitivity, insurers were reluctant to release any information out in the public arena as it is not in keeping with their normal commercial practices. They have advised JLT that attractive rates, in line with the Government insurance premium rate, will be offered and maintained during the first few years of operation.

In conclusion, obtaining approval from the ACCC to make such a scheme compulsory is only a step in the overall process that RWWA has undertaken to ensure that any scheme is viable. After accurate claims data and premium estimations have been calculated, consultation with thoroughbred horse trainers will be carried out including members and non-members of the WA Racing Trainers' Association.

The final process will be to seek approval from the board of RWWA, and if granted, the scheme will commence on 1 July 2008.

Bruce Johnston
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