

**Australian Competition  
&  
Consumer Commission**

**PRE-DECISION CONFERENCE**

**Minutes**

**Notification N93093  
lodged by Racing and Wagering Western Australia**

**11 October 2007**

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

**Pre-Decision Conference: Notification N93093 lodged by Racing and Wagering  
Western Australia**

11 October  
Novotel Langley Perth

**Attendees:**

<b>Australian Competition &amp; Consumer Commission</b>	<b>Louise Sylvan (Chair)</b> Deputy Chair ACCC  <b>Joanne Palisi</b> Director - Adjudication
<b>Racing and Wagering Western Australia (RWWA)</b>	<b>Mr Julian Hilton-Barber</b> General Manager Finance  <b>Mr Bruce Johnston</b> Finance Officer  <b>Mr Paul Evans</b> (Partner Freehills)
<b>Jardine Lloyd Thompson (JLT)</b> (RWWA's insurance broker)	<b>Mr Con Bochrinis</b> General Manager, Workers Compensation  <b>Mr John Nelson</b> Account Manager
<b>Western Australian Racing Trainers Association</b>	<b>Mr Ross Price</b>
<b>WorkCover WA</b>	<b>Mr Chris White</b> General Manager Scheme Development
<b>Horse Trainer</b>	<b>Mr John Zucal</b> <b>Mr Jim Percival</b>

**Conference commenced: 9.30 am**

**Deputy Chair Louise Sylvan** welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited the party that called the conference, Mr Julian Hilton -Barber, on behalf of Racing and Wagering Western Australia, to make an opening statement.

Deputy Chair Sylvan then asked each of the parties present to make an opening statement and then opened the floor for discussion. The opening statement by each party and main issues raised during the discussion are summarised below.

**Mr Julian Hilton-Barber**, General Manager Finance, stated that the proposal to require thoroughbred horse trainers to obtain workers compensation insurance from a nominated provider in order to be licensed by RWWA is one that has been under consideration for some time.

RWWA had requests from thoroughbred trainers to look at the issue of workers compensation insurance because many were being disadvantaged by high premiums.

RWWA has a role to ensure that the industry is conducted in an appropriate manner for the welfare of all in the industry. It is concerned to ensure that all trainers have adequate workers compensation insurance.

RWWA looked at the success of a similar scheme in NSW with well documented benefits.

In RWWA's view a compulsory scheme gives the best chance to reduce the premiums paid by trainers. The proposed scheme will not only address the issue of compliance – ensuring trainers have cover – but also will address the bias in the current scheme where some trainers put forward data that does not accurately reflect their position in terms of under declaring employees and wages. Further, having a centralised compulsory scheme is more efficient to administer and allows for better risk management practices and co-ordination of industry information.

Premiums under the proposed scheme will be based on a fair objective measure – the number of horses each trainer starts in races in a given period.

The scheme will be administered at RWWA's cost, funded through the wagering side of RWWA.

Mr Hilton-Barber said that the problem caused by the cash economy is not easily fixed, for example the tax office has not been able to address it.

*Why did RWWA remove the workers compensation insurance as a compulsory requirement for obtaining a trainers licence?*

As workers compensation insurance was already a legal requirement RWWA considered it was not the role of RWWA to enforce the legislation by having the requirement as part of their rules. Further, RWWA considered that by making it a rule of racing there was an obligation on RWWA to check for compliance. Mr Hilton-

Barber also said that the decision to remove it as a compulsory license requirement was made in the context of RWWA not being happy with the system in existence which was largely ineffective. RWWA always planned to put something in its place to address the concerns but it has taken longer than they thought.

*If there is such a problem with adequate insurance in the industry why doesn't the WA Government have a role?*

The WA Government has mandated one provider of workers compensation insurance for jockeys as this was an area where compliance was an issue due to the large premiums and high risks.

Mr Hilton-Barber advised that the Government was approached for assistance some time ago but the industry did not get support at the time. Mr Hilton-Barber said that currently the industry is viable for horse trainers but it may not remain this way if it continues as it is currently going and then the WA Government would need to step in.

*Further consultation with trainers*

Mr Hilton-Barber said that RWWA wanted to make sure there were no legal constraints to their proposal. RWWA intends to put the scheme to the industry for comment. He said it is not in RWWA's interest to put something in place which is not in the interests of the industry. RWWA has kept the Trainers Association informed of progress throughout the development of the proposal.

**Mr Con Bochrinis**, General Manager Workers Compensation, Jardine Lloyd Thompson, stated that a centralised compulsory scheme is the simplest solution to improve the availability of data about the industry which will then assist in achieving lower premiums.

There are five primary insurers able to provide workers compensation insurance in WA but three of them don't provide this type of cover to the industry partly because there is no data readily available to work out claim positions and the premium pool. As a result of only having two providers and no centralised industry data, premiums are high.

A difficulty with this industry is that it operates as a cash economy and many people are engaged on a casual basis as a result there is an under declaration of wages.

Many trainers take out the minimum policy for approximately \$200.

As a result the premium pool is low but when claims occur they are very large.

WA looked to the NSW industry for guidance. The NSW scheme is a self insurance process and although RWWA do not propose to go this way it still provides valuable guidance. There are approximately 21 000 starts in WA which is an equivalent number to NSW. In NSW the premium pool is approximately \$9 million while in WA the pool is approximately \$2-3 million. In NSW there is approximately \$4 million in claims and the figure is much larger in WA.

In NSW trainers are assisted with risk management strategies and injured people are assisted to get back to work after an injury. These issues are difficult for an individual

to develop and manage but they are much easier to achieve on an industry basis. In this regard RWWA is talking to Price Waterhouse Coopers to provide assistance to the industry.

RWWA is not making money out of the proposal it is being done at its own cost.

*What discounts are achievable under the proposal?*

Mr Bochrinis advised that if you centralise the data and have an adequate premium pool that outweighs claims you can expect premiums to drop. Currently the base premium rate for the industry is \$5.94 per \$100 paid in wages. Depending on risk a surcharge up to 75% of the base premium rate may be charged and this is what currently happens in the industry. Mr Bochrinis would expect a 25% discount off the base premium rate in the first year of the scheme. This is based on expectations from the NSW system and as a result of addressing the current problems with a small pool caused by the cash economy. Further, Mr Bochrinis said that much of the industry has the \$200 minimum policy but this doesn't reflect the actual number of employees in the industry and therefore also causes the premium pool to be very low.

Under the proposed scheme there will be no incentives to operate as a cash economy as the premium will be based on the number of starts each trainer has in a year on top of a minimum base fee. This is therefore an objective measurement that is easily verifiable. It will result in a user pays scheme.

The expected discount also reflect the experience in other industries such as car dealerships, service stations, supermarkets where there is not a cash economy and where risk management strategies and claims and recovery support have been put in place.

Mr Bochrinis agreed that some trainers will pay more under the proposal, for example those who are not declaring their situation properly.

Mr Nelson said that by way of example of the misunderstanding around the declaration of wages and need for workers compensation insurance, self employed people such as those with an ABN, who perform work for someone else are regarded as employed by that person and any payments need to be declared and included in the premium calculation.

*How will the proposed method of calculating premiums create an incentive to improve efficiency/risk management practices?*

Mr Bochrinis said they are currently working out a way to build claims performance into the premium rate. He said they could build in an additional charge for poor claims performance.

*How will the tender process preserve a level of competition as claimed?*

Mr Bochrinis advised the main current providers are CGU/SGIO and GIO. It is hoped that at least one of the other three current providers would also be interested in participating in the tender process. This is because insurers are more likely to buy into the scheme because they see benefits from introducing risk management practices.

There is generally a three year cycle where you will see results from improved risk management practices and benefits from increased information that will be achieved from having a centralised pool.

The tender will be run every year and will be awarded on an annual basis, not every three years as set out in the ACCC's draft notice.

Mr Bochrinis submitted that a similar insurance scheme for supermarkets has only 2 providers but the industry has been able to achieve a minimum 25% discount because insurers see the value of an industry risk management program.

**Mr Ross Price**, is a horse trainer in WA and is also a representative on the Australian Trainers Association and Vice President of the WA Branch of the Association. Mr Price submitted that the problem in WA is that many trainers are not obtaining appropriate workers compensation insurance. While such insurance is a legal requirement once it was removed as a RWWA licensing requirement many trainers stopped obtaining insurance.

The cash economy is very large with many trainers paying track riders in cash and not declaring full wages or actual numbers of staff employed. This problem is largely going undetected, for example Mr Price indicated that in 25 years as a trainer he had been audited by the insurance company only once.

Mr Price advised that approximately half of the 800 trainers in WA are not complying fully with the workers compensation requirement either by under declaring wages or not obtaining insurance at all. Mr Price submitted that many trainers do not consider they employ staff when they use track riders, for example. Trainers are unaware of the dangerous situations employees get in. It is in everyone's interest to make the industry safer and develop risk management strategies.

Trainers who are doing the right thing are being disadvantaged with high premiums.

Mr Price said that he understands the compulsory NSW scheme is going very well and will shortly be joined by the ACT industry. Mr Price said that the pool in NSW is bigger because it includes jockeys and race club staff. The NSW scheme involves payment of an upfront fee for every trainer plus a per start fee. The number of starts each trainer has can not be fudged it will be known by RWWA.

**Mr John Zucal**, horse trainer, advised he agreed with the ACCC's draft notice.

Mr Zucal asked how many trainers in WA are members of the Trainers Association. Mr Zucal disputes the statements that many trainers don't have adequate insurance and said that everyone he knows has adequate workers compensation insurance and if they didn't they shouldn't be able to train horses.

Mr Zucal wants the right to shop around and find the best deal for him. Mr Zucal uses a broker to assist him getting insurance and has been offered premiums that are lower than what RWWA's proposal will deliver.

Mr Zucal agrees that it should be compulsory to obtain insurance as a condition of the RWWA licence but doesn't believe it should be dictated who he must obtain it from.

Mr Zucal submitted that if you take the trouble to establish a relationship with a broker or insurer and you can get good quotes. For example, Mr Zucal said he negotiated a deal tailored to his needs and was able to get his product liability insurance included in the workers compensation insurance quote.

Mr Zucal said that the five insurers are large corporations but it is possible to negotiate with them as an individual. Mr Zucal said his last premium was approximately \$140 cheaper than the going rate. Mr Zucal said that he was quoted about \$340 for 5 horses but through negotiation he was able to pay a premium of about \$260 per annum.

Mr Zucal said he uses a rider who has his own ABN and therefore has his own insurance coverage. Mr Zucal pays this track rider based on his usage of the rider for the week.

Mr Zucal said that education of the industry on insurance matters is the job of RWWA. If the problem is with the cash economy this is what RWWA needs to address.

Mr Zucal is concerned that there are no figures to indicate how many trainers are not taking out adequate workers compensation insurance and that RWWA can't provide a sufficient guarantee that trainers will be better off under the proposal. If RWWA's scheme will be good then make it available and allow trainers to voluntarily participate.

Mr Zucal questioned the comparison between the NSW and WA industries. He said that NSW is very influential, has many more trainers and little relevance to the WA industry. It is just assumed that the NSW experience will work in WA but there is little evidence to support this.

Mr Zucal said the proposal is taking away the right of individual trainers to shop around for their own benefit.

**Mr Chris White**, General Manager Scheme Development WorkCover WA, indicated he accepted the analysis of JLT with some exceptions. Mr White said that he considers the premium rate for the industry reflects the inherent risks rather than inefficiencies in the market.

Mr White also said he thinks most trainers have workers compensation policies but perhaps these are the minimum policy.

Mr White said he was aware of a similar scheme arranged by JLT for local governments. While it is not a compulsory scheme its benefits mean that a significant portion of local government organisations participate in the scheme voluntarily.

Mr White said the industry should be commended for dealing with the problem it has identified. However, Mr White advised that WorkCover WA has not been made aware of the insurance problems in the industry. Feedback from the industry that there were problems could prompt WorkCover WA to conduct an audit. In the first instance responsibility to audit policy holders is that of the insurer as they bear the risk if policy holders are under declaring wages, for example. He said that if there is evidence of under declaration WorkCover WA will ask the insurers to conduct an audit or WorkCover WA can conduct an audit.

Mr White said businesses can shop around and often obtain a good deal with providers, for example where they can obtain their business insurance needs as a package.

Mr White accepted that the proposed formula to calculate the premium under RWWA's proposal is linked to the compulsory nature of the scheme. It is a novel approach to setting premiums and WorkCover WA would have to look at it in more detail but it wouldn't necessarily raise issues under the legislation.

#### *Government involvement*

Mr White said that if legislative change was needed in this area, for example to mandate an insurance provider, it would be a challenge and would take some time to get through.

Mr White said that the WA Government is involved to some degree but the informality of the industry makes it difficult.

#### **Close of conference**

After giving everyone the chance to make any further comments **Deputy Chair Sylvan** closed the conference by noting that the ACCC would accept further submissions until 22 October 2007. As discussed during the conference, information on the coverage of Association membership and the level of non compliance with workers compensation insurance requirements would be particularly useful for the ACCC.

Conference closed: 11.30 am