17th June 2019

Department of Justice
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Tasmanian JOCKEYS' ASSOCIATION

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To the Department of Justice,

TJA SUBMISSION DRAFT BILL S.19 CIVIL LIABILITY AMENDMENT BILL 2019

Background

In the late 1990s there was two Liability cases, whereby a two high profile Jockeys in NSW and Queensland were sued by two Jockeys for negligence in separate cases. The two high profile Jockeys lost the proceedings, with each having to pay substantial amounts of money to each claimant from their own life savings

The result from this was that it was deemed compulsory that all Jockeys nationally have identical Public Liability Insurance. The Australian Jockeys Association brokered an affordable Cover for all Jockeys. The Jockeys paid for the Cover from a certain amount deducted from each race ride. Today, Racing Australia use part of 1% prizemoney to pay for the Premium, with the Jockeys no longer having to pay out of their own pockets.

Since the first few cases, there has been a number of Jockey to Jockey Liability Claims, most of which have proven successful by the claimant against the defendant.

A December 2017 decision in the NSW Court of Appeal concerning a Public Liability action brought by jockey Paul Goode against Tye Angland raised major concerns for jockeys in Tasmania, NSW, Qld and WA.

In summary, the NSW Court of Appeal found that Mr. Angland could not be held accountable for the injuries sustained by Mr. Goode in the incident; but it went further, finding that even if Mr. Angland's riding had in fact caused the injuries sustained by Mr. Goode, under a strict interpretation of the NSW Civil Liability Act 2002, Mr. Goode's claim could not succeed.

The nature of the appeal was whether the injuries suffered by Mr. Goode fell within the exceptions under the Civil Liability Act 2002 which, in short, would **prevent participants in dangerous recreational activities with an obvious risk from making a claim for damages against another participant.**

The NSW Court of Appeal found that Mr. Goode was knowingly participating in a recreational activity (horse riding) that has obvious risk, and under those circumstances could not successfully make a claim for damages against another participant.

After this was determined by the NSW Court of Appeal, the Australian Jockeys Association, along with the Tasmanian Jockeys Association sought a review of the legislation in other states including Tasmania and the advice we received is that a strict reading of the Tasmanian Legislation could result in the courts adopting the NSW Court of Appeal's interpretation.

Advice/Findings

The advice we have received regard to Tasmanian Jockeys is as follows:

- Tasmania, there is an absolute defence and the definition of recreational activity includes sport.

As with most legislation, it requires the effluxion of time to test different elements of the drafting before the courts to see some inherent problem. Goode v Angland has exposed an issue of great concern to Australian and Tasmanian Jockeys. The reality appears to be there is a possibility that riders in Tasmania may be riding without appropriate coverage regarding Public Liability Insurance.

Riding in horse racing, at speed, is obviously a dangerous profession. In fact, a Medical Journal of Australia study and the Menzies Institute, with also studies in the US, that found being a Jockey is the more dangerous than being by a boxer, pilot, logging workers, roofers, structural metal workers, with only the job of an offshore fisherman having more risk to lives. It is clearly a work activity for the jockeys, and not a recreational activity. Jockeys are professional sports persons; they do not perform their duties as a recreational activity.

Submission

After reviewing the Tasmanian Legislation, the Tasmanian Jockeys Association formally made a request to the Racing Minister for an urgent amendment to address the issue that has been identified.

Amending the Tasmanian Civil Liability Act 2002 will afford jockeys the financial protection of being able to bring civil claims against other jockeys for substantial physical injuries, such as paraplegia and brain injury, injuries that prevent jockeys, not only from future work but also from managing the costs of long term care. The present workers compensation system is not designed to cater for these types of injuries and falls substantially short of catering for the idiosyncrasies of the future needs of such severely injured jockeys.

On behalf of all Tasmanian Jockey, we endorse the recommendation that the Tasmanian Civil Liability Act 2002 Section 19 is amended by omitting the definition of *"recreational activity"* and substituting the following definition with: ***"recreational activity"*** *includes any pursuit or activity engaged in for enjoyment, relaxation or leisure.*

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We look forward to a positive outcome re amendment to Section 19, of the Civil Liability Act 2002.

Yours Sincerely

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