



2024

Parliament of Tasmania

**LEGISLATIVE COUNCIL
GOVERNMENT ADMINISTRATION COMMITTEE A**

SHORT INQUIRY PROCESS REPORT

ON

**WORKERS COMPENSATION INSURANCE
WITHIN THE RACING INDUSTRY**

Members of the Committee Inquiry:

Hon Ruth Forrest MLC (Chair)

Hon Dean Harriss MLC

Hon Sarah Lovell MLC

Hon Bec Thomas MLC (from 21 May 2024)

Hon Kerry Vincent MLC (from 21 May 2024)

Hon Luke Edmunds MLC (until 3 May 2024)

Hon Mike Gaffney MLC (until 3 May 2024)

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ABBREVIATIONS

GBE	Government Business Enterprise
ORI	Office of Racing Integrity
RTI	Right to Information
SIP	Short Inquiry Process

SHORT INQUIRY OVERVIEW

1. On 27 November 2023, Government Administration Committee A (the Committee) resolved to initiate a Short Inquiry Process (SIP) into matters related to workers compensation insurance within the racing industry. In particular, this Committee seeks to clarify who is responsible for obtaining workers compensation insurance within the industry, and how this is enforced.
2. This Report should be read in conjunction with the attached documents.
3. The Committee notes evidence heard during House of Assembly GBE hearing on 12 December 2023 that suggested there is a lack of clarity around which entity is responsible for ensuring employers (trainers) have workers compensation insurance in place. Mr Dean Winter MP questioned the Minister, the Hon Felix Ellis MP and Tasracing representatives - Mr Gene Phair, Chair and Mr Andrew Jenkins, Chief Executive Officer:

Mr WINTER - Mr Phair, in that RTI that I received, it outlines an email from your code lead Harness which says that ORI has not managed workers compensation for trainers for years. How long has Tasracing been aware that Ben Yole Racing did not have adequate workers compensation insurance?

Mr PHAIR - From a board point of view, I'm not aware of that. Can I defer the question to our CEO?

Mr JENKINS - Thank you, Chair and Mr Winter. That matter was brought to our attention as part of the finding.

Mr WINTER - Thanks. Does Ben Yole Racing have workers compensation insurance now?

Mr JENKINS - I could not confirm. Licensing conditions and licensing are matters handled by the Office of Racing Integrity.

Mr WINTER - The situation is that we have workers who were seriously injured working for somebody who did not have adequate workers compensation insurance. In that RTI, we have an email from a participant - which I believe to be, very strongly, because the name "Cat" was accidentally left in - it's Catherine Yole writing, emailing to Tasracing about the cost, and that being prohibitive for getting workers compensation insurance, around \$2500.

Do you think it's appropriate that Ben Yole Racing continue to operate with dozens of runners every week without workers compensation insurance, in the likely event that is the case?

Mr JENKINS - Again, matters of licensing are the purview of the Office of Racing Integrity. What I can confirm, Mr Winter, is that we are currently in discussions with the Director of Racing regarding rules and consistent application of licensing, where matters of workers compensation insurance are applicable.

Mr WINTER - My concern is that your leading trainer for harness racing, who has the majority of most fields, isn't complying with the Tasmanian harness license application requirements of this financial year. It clearly says, on page 12:

... acknowledge that a current workers compensation policy will be maintained and paid, for paid and voluntary workers, if required under state legislation ...

It is required under state legislation. How can it possibly [be] that the biggest trainer in harness racing is continuing to operate without workers compensation insurance, some nine, 10 months after the crash at Rowella?

Mr JENKINS - Again, Mr Winter, matters of licensing are managed by the Office of Racing Integrity. I agree with you and acknowledge that it is a clear licensing requirement on exactly the form that you presented, that appropriate workers compensation insurance will be held as required under the 1988 Act. However, the determination and granting of licenses does not sit under Tasracing within the current legislation. It is a matter for the Office of Racing Integrity.

Mr WINTER - I will read a statement that was issued by the Office of Racing Integrity yesterday. It says:

The Office of Racing Integrity enforces the rules of racing made by the Tas Racing Board. There are different sets of rules for each racing code. The Regulator will make recommendations to Tas Racing to ensure that prescribed rules are consistent and appropriate across all codes.

Ultimately, the obligation on an employer (trainer), to hold insurance, arises under Section 97 of the Workers Rehabilitation and Compensation Act 1998, a breach of that provision is not within the regulatory purview of the Office of Racing Integrity.

So, the Director of Racing is saying he's not responsible for ensuring this. You're saying, you're not responsible for ensuring trainers have got workers compensation. So, who is?

Mr JENKINS - That is the nature of the discussion that we will continue with the Director of Racing. But, ultimately, and I believe as has been covered earlier, the responsibility to hold appropriate workers compensation insurance rests with the business owner or the employer. It's my understanding of the current legislation that matters of licensing are, in fact, a matter for the Office of Racing Integrity, and, as I have indicated, those matters are currently in discussion between the Director of Racing and Tasracing, Mr Winter.

Mr WINTER - Minister, to you, you've just heard Tasracing saying that it's not responsible for ensuring that trainers have workers compensation insurance. I've just read a statement from ORI saying that they are not responsible for ensuring that trainers have workers compensation insurance. What's your view?

Mr ELLIS - I am aware of the correspondence from the Director of Racing regarding this. I think the point made around inconsistency across the codes is one that's worth looking at.

Mr WINTER - It's not inconsistency, it's noncompliance. They're not meeting the licensing obligations, Minister.

Mr ELLIS - There is inconsistency across the codes and ultimately Work Safe is the regulator in this space, and it's important that all businesses are complying with that. I think the recommendation around doing further work in this space is important. The CEO has mentioned that they'll be looking into that, and I think that's important.¹

¹ House of Assembly, GBE Scrutiny (Tasracing Pty Ltd), 22 November 2023, pp. 30-31.

CONDUCT OF INQUIRY

4. On 17 November 2023, the Committee wrote to the Minister for Racing, the Minister for Workplace Safety and Consumers Affairs, WorkSafe Tasmania, Tasracing and the Office of Racing Integrity (ORI) advising the Committee's resolution to commence the Short Inquiry Process (SIP) and to extend an invitation to provide verbal evidence at a public hearing of the Committee on 5 December 2023.
5. Evidence was heard at a public hearing on 5 December 2023.
6. On 14 February 2024, the Committee was interrupted by the prorogation of the Tasmanian Parliament due to the state election. Government Administration Committee A was re-established on 21 May 2024.
7. At the first meeting of the Committee on 18 June 2024, the Committee resolved to report the evidence received in the previous Parliament, and refer the Inquiry to Government Administration Committee B, where the racing portfolio now sits, for further consideration.
8. The minutes of the Committee meetings are attached to this report as **Appendix A**.

SUMMARY OF EVIDENCE

9. A public hearing was held on 5 December 2023 at Parliament House, Hobart. The hearing was attended by:
 1. Mr Justin Helmich, General Manager of the ORI and Mr Jason Jacobi, Secretary, Department of Natural Resources and Environment Tasmania (NRE Tas).
 2. The Hon Madeleine Ogilvie MP, Minister for Workplace Safety and Consumer Affairs, Ms Robyn Pearce, Executive Director, WorkSafe Tasmania and Mr Damien Davidson, Director of Compensation Schemes, WorkSafe Tasmania; and
 3. The Hon Felix Ellis MP, Minister for Racing, Mr David (Dave) Manshanden, Chief Operating Officer and Mr Daron Heald, Chief Financial Officer Tasracing.
10. The Transcript of Evidence from the hearing held on 5 December 2023 is attached as **Appendix B**.
11. The Committee sought clarification from Mr Justin Helmich, General Manager, ORI regarding responsibility for holding workers compensation insurance for those participating in the racing sector:

***CHAIR** - ... In terms of the inquiry, it was raised in GBE hearings last week or the week before, and the reason the Committee has resolved to invite you in is because it's unclear who has the responsibility for providing workers compensation insurance for those participating in the racing sector. Could you, from your perspective, provide an overview of where you see that?*

***Mr HELMICH** - Thank you for the question, Chair. The Workers Rehabilitation and Compensation Act 1988 is assigned to the Minister for Workplace Safety and Consumer Affairs and subject to the oversight of the Department of Justice. WorkSafe Tasmania is responsible for regulating the act and for ensuring compliance including investigating alleged breaches of the act. In terms of who is responsible for providing workers compensation insurance specifically, section 97 of the Workers Rehabilitation and Compensation Act places an obligation on the employer to maintain in force an applicable policy of insurance in respect to liabilities to pay compensation under the act. An employer who fails to comply is guilty of an offence and is subject to a penalty. Compliance with that Act, in my understanding, is regulated by WorkSafe Tasmania.²*

Mr Helmich was asked to provide clarification regarding the definition of 'participants' and who is seen as an 'employer':

***Mr HELMICH** - Determining workplace compensation insurance, I think, is complex. Specifically, the Office of Racing Integrity does not provide advice in relation to those matters, but it will be a different employer, depending on the circumstances. In some instances - in many instances - it will be a participant if they have workers working in their operation, they may be responsible for it. Certainly, for the stewards and anybody working within the Office of Racing Integrity's remit, the Office of Racing Integrity is responsible. So, they are the stewards, people working in the office and certainly all of my staff. I would*

² Mr Helmich, *Transcript of Evidence*, 5 December 2023, pp. 1-2.

be responsible. The secretary would be responsible and then Tasracing would be responsible for the staff within their purview.

CHAIR - When you say participants, can you define what you mean by participants? So we are really clear about whom we are talking.

Mr HELMICH - There are a range of different participants who are licensed by the Office of Racing Integrity. It is complex because it's across a number of different codes of racing. There are three codes of racing: the thoroughbred code, the harness racing code and the greyhound racing code. There are certain participants within each of those codes that are licensed under the Office of Racing Integrity. For example, in the thoroughbred code, we license the trainers across various classifications. We license stable hands, owners to some extent, when they own a horse. In the harness code, we license trainers, stable hands and we also license drivers in that code as well.

CHAIR - Not owners?

Mr HELMICH - I don't believe we specifically licence owners. We register horses but I don't think we licence owners as such.

...

Mr HELMICH - In the greyhound code, the classifications that we licence are trainers, and, as a general rule, catchers and also attendants; so, they assist in the kennels and those types things.

CHAIR - So, all the people that work in the kennels caring for the dogs?

Mr HELMICH - Correct. Those are the classifications that we licence under the Office of Racing Integrity, but that's different from people who may be employed within each participant's organisation.

That is much broader than that, or may be much broader than that. It may be people working in offices who are not licensed by the Office of Racing Integrity, there may be people undertaking other duties who are not licensed by the Office of Racing Integrity as well. The definition around who is an employer and who is a worker needs to come back to the Workers Rehabilitation and Compensation Act, but from my perspective, I licence a certain cohort of participants within the industry.³

The Committee sought to clarify how ORI ensures that trainers hold a workers compensation insurance policy:

Mr HELMICH - In terms of the wording of the requirement or the condition, it acknowledges that current workers compensation will be maintained for paid and voluntary workers if required. The requirement is for the participant to seek appropriate advice and determine whether or not they need that insurance. It's more of an educational provision rather than an enforcement provision within the licensing requirements.

Ms LOVELL - How do they acknowledge that they will maintain a compensation policy?

Mr HELMICH - In the thoroughbred code there is a tick box acknowledgement included within the thoroughbred licence application form, and that's an online application form. They are required to tick that, and if that's not -

CHAIR - Do they have to provide evidence that they've actually got it?

³ Mr Helmich, *Transcript of Evidence*, 5 December 2023, p. 2.

Mr HELMICH - No.

Ms LOVELL - Is that the same requirement in the harness racing licence application? Is there a tick box?

Mr HELMICH - There is no equivalent tick box on harness application forms. The reason for that discrepancy is not fully clear but it appears an inadvertent oversight that dates back to 2019 when the acknowledgement was actually introduced into the harness code.

Ms LOVELL - One of the conditions is that they acknowledge that there's no actual way for them to do that in applying for their licence, is that what you're saying?

CHAIR - Currently.

Mr HELMICH - I think there is no tick box on their application. I think each of the participants needs to, when they go through their various licensing requirements and the application form - it is included within those forms that the acknowledgement that we've already spoken a fair bit about. In terms of a tick box, no, there is not a tick box.

Ms LOVELL - The requirement is the same between the thoroughbred racing and the harness racing, but one has the tick box and one doesn't. When did you become aware of that discrepancy?

Mr HELMICH - I have only just recently become aware of that discrepancy.

Ms LOVELL - Do you know when? ...

Mr HELMICH - In the last week.

Ms LOVELL - Okay, and have you taken any steps to rectify that discrepancy? Will there be a change to that?

Mr HELMICH - There will be a change in next year's licensing documentation, correct.

CHAIR - When are the licences renewed?

Mr HELMICH - It's different for each code. For harness racing it starts at 1 August, I believe.

CHAIR - That's quite some time.

Mr HELMICH - That's quite some time, correct. The vast majority of licences get renewed at that period, and indeed, whilst we do undertake licensing activities year-round for ad hoc licences that come in, the vast majority of licences need to be done - or are done - in that period.

CHAIR - Since you have become aware of this discrepancy, have you or will you take any action to require harness racing employees who have the legal obligation to actually provide some documentation or note that they have actually got workers compensation insurance?

Mr HELMICH - Again, I refer back to the general requirement which says that they acknowledge that they will maintain one if they are required to under state legislation. In terms of that, I think I've already stated that they're not required to provide evidence of that at this point in time, even within the thoroughbred code and the harness code, it is simply an acknowledgement. In the thoroughbred code they're required to, within our tick box, and acknowledge that they understand that requirement. The requirement exists

*within the harness racing requirements as well, and it's just unfortunate that there is no tick box as such.*⁴

Mr Helmich was then questioned regarding whether audits are undertaken to confirm requirements of s 97 of the *Workers Rehabilitation and Compensation Act 1988* are met.

CHAIR - ... *I did ask, ... about whether you undertake any audits. The requirement to meet that section 97 of the ... Act.*

Mr HELMICH - *Certainly, I did have a note in relation to that. In relation to thoroughbred rule 15.19, in 2021-22 the Office of Racing Integrity undertook a compliance assessment in respect of compliance with local rule 15.19 and the licensing requirements. The compliance assessment revealed that there was a high percentage of trainers who had a level of insurance coverage. In the same year, Tasracing provided a significant financial assistance to thoroughbred trainers, reimbursing the cost of insurance policies taken out by trainers and a similar arrangement was put in place by Tasracing in 2022-23 and therefore, a subsequent audit was not done in either of those years. A full order of compliance is scheduled for the 2023-24 financial year.*

CHAIR - *And you undertake that, your office undertakes that, or is that an external audit of it?*

Mr HELMICH - *No, my office did that.*⁵

Mr Helmich was asked whether a harness trainer, who has a licence but not a workers compensation insurance policy, would be in breach of their conditions of licence:

Ms LOVELL - *So, if they didn't have a workers compensation policy when they were required to and they had acknowledged that, are they then in breach of their licence?*

Mr HELMICH - *If an application came to me that, in the thoroughbred code where there is a tick box and they did not acknowledge that they needed consider that, then I wouldn't licence them.*

Ms LOVELL - *But if they did acknowledge it, but then didn't take out a policy, what happens then to their licence?*

Mr HELMICH - *Then, I would deal with that through the fit and proper person test as I've indicated and make an assessment based on the circumstances that existed on the evidence that was available as to whether or not they were a fit and proper person to continue to be licensed.*

Ms LOVELL - *In the example that everything else they are doing is perfectly fine and exemplary but they don't have a workers compensation policy where they are required to by law, would that be enough for their licence to be cancelled? Would they be in breach of their licence conditions?*

CHAIR - *Under the fit and proper persons test?*

Mr HELMICH - *If they continued to not have a workers compensation insurance then I expect it would depend on the circumstances, and I would need to give consideration to it. For example, in relation to the fit and proper person test, there are provisions there and it differs between the codes. In terms of the harness racing code, there are provisions there that if someone fails to abide by all relevant legislation then that is something that I can consider in terms of whether someone is a fit and proper person. In that instance, if they*

⁴ Mr Helmich, *Transcript of Evidence*, 5 December 2023, pp. 5-6.

⁵ Mr Helmich, *Transcript of Evidence*, 5 December 2023, p. 9.

*had indicated that they, and there was evidence to indicate that they have not complied with section 97 of the Workers Rehabilitation and Compensation Act, then that will potentially provide grounds for me to determine that that person is not a fit and proper person.*⁶

The Minister for Workplace Safety and Consumer Affairs, the Hon Madeleine Ogilvie MP and Ms Robyn Pearce, Executive Director WorkSafe Tasmania were questioned regarding responsibility to ensure employers have the appropriate workers compensation insurance:

CHAIR - *If I can perhaps restate the question, in case we're getting too far off the question. The question was: who is responsible? There's been some confusion, as Sarah said, around who is responsible to ensure that workers do have the appropriate workers compensation insurance. Who is responsible for that?*

Ms OGILVIE - *The company, the employer is responsible for having workers compensation.*

CHAIR - *Who is responsible for ensuring that workers have that?*

Ms OGILVIE - *If they do not have it, if they breach the law by not having it, then WorkSafe has the regulatory function. ...*

Ms PEARCE - *Thank you, Minister. That is correct. The Secretary of the Department of Justice has a responsibility for appointing authorised officers to undertake the compliance and enforcement activities as they relate to the Workers Rehabilitation and Compensation Act. Under delegation, inspectors are appointed as authorised officers and they undertake the compliance and enforcement activities associated with ensuring compliance with the statutory requirements of the act.*⁷

Ms Pearce was questioned as to whether audits were undertaken to ensure employers within the racing sector hold workers compensation insurance:

CHAIR - *... has the regulator undertaken any audits, particularly with some concerns raised about the racing sector, of all employers in the racing sector? I note who may be required to hold workers compensation insurance. Have authorised officers proactively undertaken some work around that?*

Ms PEARCE - *In terms of determining the activities that are undertaken by WorkSafe inspectors, we use national compliance and enforcement policy to help us to prioritise where we put our focus. Our primary focus goes initially to those matters where there has been serious injury or harm, or the likelihood of serious injury or harm, and then we have a cascading effect. Most of our focus goes into responding to notifiable incidents and complaints in the workplace. We undertake proactive campaigns where we can. As this matter has been brought to our attention now, about a concern that there may be a lack of understanding in the industry, we are putting in place a proactive compliance campaign that we will run out in the first six months of next year in order to audit whether or not employers are aware of their obligations and to ensure that there is compliance with those obligations.*⁸

The Minister was then asked whether she held a view on whether or not licences should be issued without first confirming workers compensation insurance policies are in place:

Ms LOVELL - *It's a clear legal requirement under the Workers Rehabilitation and Compensation Act but under the licensing requirements for Tasracing, as the Minister for*

⁶ Mr Helmich, *Transcript of Evidence*, 5 December 2023, p. 8.

⁷ Minister Ogilvie and Ms Pearce, *Transcript of Evidence*, 5 December 2023, p. 18.

⁸ Ms Pearce, *Transcript of Evidence*, 5 December 2023, p. 19.

Workplace Safety, do you believe that it should be a requirement of the licensing that there is some evidence provided of those workers compensation policies?

Ms OGILVIE - *I have a personal view. I'm not the Minister for Racing and no doubt you'll hear from the Minister for Racing. But anything we can do to make people aware and make sure that they're doing what is their legal obligation, I think we ought to be doing. I think you just heard from Robyn that they are doing some work on that.*

...

CHAIR - *It is a serious matter and if someone can get a licence without it and not be in breach of that licence, would that concern you, from a workplace health and safety position?*

Ms OGILVIE - *Anybody who breaches this very clear regulatory requirement is in breach of the law and subject to a penalty up to 500 penalty units. This is where it stops with the law and stops with this act. This is the peak regulation that applies.*

CHAIR - *Yes, I understand that. Not meeting that requirement in the Act, do you think that would -*

Ms OGILVIE - *It gets you a big penalty, yes.*

CHAIR - *In terms of assessment as a fit and proper person to continue operating in an industry, would that be something that, to you in your mind, would be a fatal flaw?*

Ms OGILVIE - *I am very concerned to make sure that everybody who is covered by this legislation is doing the right thing and that is why we have WorkSafe and others. As to how the licencing regime in racing works, I would have thought that compliance with the law is a basic.⁹*

And further:

Ms LOVELL - *... my question is is there anybody responsible for ensuring employers are complying with that requirement under law?*

Ms PEARCE - *WorkSafe Tasmania is responsible for regulating that legislation, so if there is a body it sits with WorkSafe Tasmania. Does WorkSafe Tasmania conduct inquiries into whether employers are maintaining adequate coverage as the nature of their business changes? Given the number of businesses that exist within Tasmania, 41 000 businesses, 98 per cent of them being small business, it is not possible as a regulator for us to consistently be enquiring with businesses that a policy they hold is adequate for the number of workers.*

That is their responsibility to do, we become aware of it should there be complaints or issues raised. It's just a sheer matter of capacity to be able regulate across all the regulatory functions there are.

Ms LOVELL - *Is that something WorkSafe would potentially investigate if the issue was raised? If there was a concern raised without something having happened - necessarily - that something WorkSafe could inquire into and potentially be some enforcement of that?*

Ms PEARCE - *Yes absolutely. If a complaint was raised with us we would act.¹⁰*

⁹ Minister Ogilvie, *Transcript of Evidence*, 5 December 2023, pp. 19-20.

¹⁰ Minister Ogilvie and Ms Pearce, *Transcript of Evidence*, 5 December 2023, p. 22.

The Hon Felix Ellis MP, Minister for Racing, Mr Dave Manshanden, Chief Operating Officer and Mr Daron Heald, Chief Financial Officer, Tasracing were asked to comment on which entity is responsible for ensuring participants have the appropriate workers compensation insurance, and what could or would trigger a review of the fit and proper person test:

CHAIR - As you're probably aware, there have been differing views - if you like - on who's actually responsible for ensuring that participants in the racing industry have workers compensation insurance. We've heard from ORI earlier. We've heard from Workplace Safety earlier. It seems that there's not any clear person with responsibility to say you have to have workers compensation insurance other [either] - which means comply with the law, without a licence being issued.

If someone didn't have workers compensation insurance, that would be a matter that the fit and proper person test would apply to. Can you tell us what your view is, Minister, on whether you see a person without workers compensation insurance, an employer, should be issued with a licence to operate, to conduct their business, without workers compensation?

Mr ELLIS - Yes. I don't think that characterisation is quite accurate, Chair. I think WorkSafe made it very clear that WorkSafe is the regulator in this space and they have a strong role when it comes to ensuring that the act is complied with and that they investigate matters regarding people not having - businesses - not having workers compensation insurance. That is really important. They are the regulator that's responsible for regulating all -

CHAIR - They're not responsible for licensing, Minister. ...

Mr ELLIS - Sure, if the question is around licensing, there are a range of different licences that you can have within the racing industry. Now, as part of that, we want all racing participants to comply with all laws in the State of Tasmania. That's absolutely important. There are discrepancies in terms of the licensing arrangements, in terms of the questions that are asked between the different codes.¹¹

In relation to the question of whether not having workers compensation insurance would trigger a suspension of a license versus triggering the 'fit and proper person' assessment, the Minister provided the following responses:

CHAIR - What we heard from ORI, ... if everything else was all fine in terms of their compliance with other requirements of their licence, but they didn't have workers compensation, that wouldn't trigger a suspension. That would trigger a fit and proper person assessment. Do you think that's appropriate? Or the licence should be suspended?

Mr ELLIS - That is [it] triggers a fit and proper person process?

CHAIR - Yes, rather than a suspension of their licence.

Mr ELLIS - The fit and proper person process is a condition of the licence. Working through a process around whether someone is a fit and proper person to hold a licence is an appropriate process. Unless I am misunderstanding your question, Chair.

CHAIR - The question is, if someone can have, hold a licence - and in the harness sector, for example, they don't have to tick the box to say that they've got workers compensation - ... they could operate without workers compensation insurance. If that was detected, that they didn't have it prior to some incident occurring, the only process then that would trigger would be - not an automatic suspension of their licence until they did have it - it would be a fit and proper person test?

¹¹ Minister Ellis, *Transcript of Evidence*, 5 December 2023, pp. 30-31.

Mr ELLIS - So, you need to be a fit and proper person to hold a licence and so in determining that, the regulator goes through a process in terms of determining whether someone is a fit and proper person -

CHAIR - So, if they don't have workers compensation insurance, does that then not meet that fit and proper person test?

Mr ELLIS - That's a matter for the regulator, as far as the way they assess fit and proper persons.

CHAIR - Which regulator?

Mr ELLIS - Are we talking in terms of licensing?

CHAIR - Yes.

Mr ELLIS - Yes, in terms of ORI and their work around licensing, if that is your question, I am not sure if I am misunderstanding something there, Chair.

Ms LOVELL - Minister, we heard this morning that - and putting aside the discrepancies between the application process for thoroughbred licensing and harness licensing, because we know that there's a tick box in one and not in the other. Putting that aside, the condition or the requirement generally under the licensing is not necessarily to have workers compensation insurance, but it's to acknowledge that workers compensation insurance is required under state legislation.

My first question to you is, are you satisfied that that is enough of a requirement, a strong enough requirement - in terms of licensing for harness and thoroughbred racing - to not actually have the insurance and have to prove that you have the insurance but just to acknowledge that you know that it's required?

Mr ELLIS - In terms of the question around the discrepancy, because I think that is sort of at the heart of the matter, I was made aware that there's a discrepancy between the different codes with the way that they make requirements around licensing for workers compensation insurance and then sought further information around that discrepancy: why it exists and what further measures should be taken. Subsequently, the Office of Racing Integrity wrote to Tasracing regarding that discrepancy and -

Ms LOVELL - This is the tick box?

Mr ELLIS - Yes, as mentioned by you before, Ms Lovell, that in harness racing it's different from thoroughbred, and greyhounds is similar with harness racing. I was made aware of that discrepancy and subsequently ORI has written to Tasracing around that. I am aware that Tasracing is looking into that process and any further changes that might be made because safety absolutely needs to be at the core of everything that we do when it comes to racing. There are elements of racing that are very high risk -

Ms LOVELL - Can I stop you there because I don't agree the discrepancy is the heart of the issue. The discrepancy is really just a discrepancy in terms of how that requirement is acknowledged. The heart of the issue, in my view, is the requirement itself and the fact that the requirement is not for a licence holder to have insurance. It is just to acknowledge they're supposed to have it. Are you satisfied with that being the requirement of the licence? That they just acknowledge that they are meant to have it, whether they do that through a tick box or a signature on a form or however it is done, the requirement is the same for both codes.

Mr ELLIS - Everyone needs to comply with the law, that is an absolute bedrock principle when it comes to this matter. Where people are not complying with the law then there needs to be processes undertaken to remedy that and any appropriate sanctions as part of that process.

Whether we're talking through workers compensation insurance requirements or any other matters when it comes to the laws of the state of Tasmania. We expect participants to comply.

In terms of the way that we ask those questions in questions and licensing forms, working around what more we can do in the future is important but where there are people that are not complying with the law then there should be appropriate sanctions in that space. ...

Ms LOVELL - *On that, given that the sanction for not holding workers compensation, breach of the law there sits in the Workers Rehabilitation and Compensation Act, section 97. The process for that, as we're seeing play out now, is a very lengthy process, and there are no provisions under that act to do anything in terms of restricting the operations of somebody in a licensed environment until that person has been prosecuted. That's taking some time in the instance that's before us now, that's the 30 January, now here we are in December and that investigation is still under way. What that means is, that licence holder has been allowed to continue to operate for almost 300 days without workers compensation insurance, in a regulated licensed environment. As Minister for Racing, do think that's acceptable?*

Mr ELLIS - *I am not going to go into the specifics of a legal matter that's currently live.*

Ms LOVELL - *I am not asking you to do that. I am asking you, do you think it's acceptable that there are no provisions currently to restrict in any way the operations of somebody in a licensed environment when they're potentially in breach of this law?*

Mr ELLIS - *There are obviously fit and proper persons processes that apply to licences and I think that's already been outlined here around that. There are processes to go through with all legal matters and going through legal processes is important, as is complying with the law.*

Ms LOVELL - *One more question on this, on the fit and proper person, I think this is where we are leading to. Do you believe that somebody can be a fit and proper person in terms of holding a licence in this environment if they are in breach of a law, in this instance, being workers compensation insurance legislation? Everything else they're doing might be exemplary but they don't have workers compensation insurance and they knew they were meant to because they've acknowledged through the process. Do you think that person should be able to be still deemed a fit and proper person to hold that licence?*

Mr ELLIS - *We expect all people to comply with the law when it comes to their licensing requirements. The Independent Regulator then assesses whether someone is a fit and proper person as it applies, particularly given the nature of any severity of breach when it comes to rules in all those matters, that's important. It's important that independent regulators are enabled to do their job. What I might do is pass to the department secretary -*

Ms LOVELL - *I'm really interested in hearing you, as Minister for Racing, whether you believe -*

Mr ELLIS - *I believe all people who are licensed should be fit and proper persons.*

Ms LOVELL - *And do you believe that someone can be a fit and proper person if they are in breach of the law by not having workers compensation insurance?*

Mr ELLIS - *As mentioned, we have an independent regulator in this space who determines who is a fit and proper person as part of that process. Our expectation is that people are fit and proper persons. The Independent Regulator will make that assessment based on severity of breach and other important matters and they will work through that, but what I might do is pass to the secretary if he wants to update anything further in terms of the Independent Regulator space.*

Mr JACOBI - Thank you, through you Minister, in my personal opinion and in the community opinion, I think it would be fair to say that if a person isn't licensed or has deliberately avoided holding workers compensation, then that is not appropriate. That is not the behaviour of a fit and proper person. In saying that, though, every case that is brought to our attention has to afford the person natural justice. We have to make inquiries to determine that there aren't genuine or legitimate reasons why they haven't been able to obtain workers compensation and in a particular case of one trainer, that process is underway right now.¹²

¹² Minister Ellis and Mr Jacobi, Transcript of Evidence, 5 December 2023, pp. 31-34.

FINDINGS

The Committee makes the following findings —

1. It is a legal requirement under the *Workers Rehabilitation and Compensation Act 1998* for all employers to hold workers compensation insurance for eligible workers.
2. In applying for a licence, racing industry trainers are required to acknowledge that they are aware of their legal obligation under the *Workers Rehabilitation and Compensation Act 1998*. However, they are not required to provide evidence of workers compensation insurance.
3. In the thoroughbred racing code, trainers are required to tick a box stating they are aware of their obligation to hold workers compensation insurance when applying for a licence. No specific acknowledgement is required in the harness racing code.
4. Both the Hon Madeleine Ogilvie MP, Minister for Workplace Safety and Consumer Affairs and Felix Ellis MP, Minister for Racing stated that the requirement for racing industry employers to hold workers compensation insurance for their employees is a consideration of the ‘fit and proper person’ assessment.
5. The Committee was unable to obtain a clear response from either the Hon Madeleine Ogilvie MP, Minister for Workplace Safety and Consumer Affairs, nor the Hon Felix Ellis MP, Minister for Racing whether a trainer in the racing industry who is an employer and does not hold workers compensation insurance, would or should have their licence suspended or cancelled.
6. There are no regular or random audits of workers compensation insurance compliance. Targeted audits of workers compensation insurance compliance are undertaken when concerns are raised with WorkSafe Tasmania.
7. The Office of Racing Integrity Director is responsible for issuing and renewing of racing licences and administers the ‘fit and proper person’ assessment as part of the licencing process.
8. In December 2023, WorkSafe Tasmania informed the Committee of their intention to implement a proactive compliance program in the first six months of 2024 to audit whether or not racing industry employers are aware of their obligations and to ensure compliance with those obligations.

RECOMMENDATION

The Committee makes the following Recommendation —

1. A further inquiry be considered into the following matters —
 - (a) The criteria and assessment process for determining a person is a 'fit and proper person' to hold a licence in the racing industry;
 - (b) Whether a person ought to be required to provide evidence that they meet all legal obligations as an employer, and any other relevant legal obligations, to hold a licence in the racing industry; and
 - (c) Any actions undertaken by WorkSafe Tasmania, Tasracing and the Office of Racing Integrity specific to the issues raised in this Report.

A handwritten signature in black ink, appearing to read 'R. Forrest', with a stylized, flowing script.

Hon Ruth Forrest MLC
Committee Chair
17 July 2024

APPENDIX A – Meeting Minutes

LEGISLATIVE COUNCIL SESSIONAL COMMITTEE
GOVERNMENT ADMINISTRATION COMMITTEE 'A'

MINUTES OF MEETING

MONDAY 27 NOVEMBER 2023

The Committee met at 12:30 pm in Committee Room 2, Parliament House, Hobart.

Members Present:

Mr Edmunds (via Webex)

Ms Forrest

Mr Gaffney (via Webex)

Mr Harriss

Ms Lovell (via Webex)

Apologies

Nil

In Attendance

Jenny Mannering (Committee Secretary)

Ali Scott (Committee Secretariat)

Confirmation of Minutes

The **Minutes of the Meeting** held on Thursday 16 November 2023 were confirmed as a true and accurate record.

Correspondence

Incoming

1. Letter received 20 November 2023 from Hon Felix Ellis MP, Minister for Skills, Training and Workforce Growth accepting invitation to attend a public hearing to be held on Tuesday 5 December 2023
2. Letter dated 24 November 2023 from Dean Winter MP, in relation to proposed short inquiry into Racing Participant Safety (amended letter sent 25 November 2023)

Outgoing

1. Letter dated 17 November 2023 to Hon Felix Ellis MP, Minister for Skills, Training and Workforce Growth regarding invitation to attend a public hearing to be held on Tuesday 5 December 2023

The Committee received the incoming correspondence and endorsed the outgoing correspondence.

Business

- Potential SIP into Tasracing workers compensation

A discussion took place.

The Committee **RESOLVED** to establish a short inquiry process inquiry into to workers compensation insurance within the racing industry.

The Committee **RESOLVED** to write to the Minister for Racing, Tasracing, WorkSafe Tasmania (through the Minister) and the Office of Racing Integrity advising of the above resolution and inviting their attendance at a public hearing on Tuesday, 5 December 2023 from 9:00 pm – 12:00 pm.

gaa.aam.231127.mins.as.001

Other Business

Nil

Next Meeting

Tuesday 5 December 2023.

Adjournment:

At 12:51 pm the Committee adjourned.

DATE

5/12/23

CONFIRMED



CHAIR

LEGISLATIVE COUNCIL SESSIONAL COMMITTEE
GOVERNMENT ADMINISTRATION COMMITTEE 'A'

MINUTES OF MEETING

TUESDAY 5 DECEMBER 2023

The Committee met at 9:20 am in Committee Room 2, Parliament House, Hobart.

Members Present:

Mr Edmunds

Ms Forrest

Mr Gaffney

Mr Harriss

Ms Lovell

Apologies

Nil

In Attendance

Jenny Mannering (Committee Secretary)

Ali Scott (Committee Secretariat)

Confirmation of Minutes

The **Minutes of the Meeting** held on Monday 27 November 2023 were confirmed as a true and accurate record.

Correspondence

Incoming

1. **Tasracing SIP** - Email dated 28 November 2023 from Office of Hon Felix Ellis MP, Minister for Racing accepting invitation to attend a public hearing to be held on Tuesday 5 December 2023
2. **Tasracing SIP** - Email dated 29 November 2023 from Justin Helmich, General Manager, Office of Racing Integrity accepting invitation to attend a public hearing to be held on Tuesday 5 December 2023
3. **Tasracing SIP** - Letter dated 29 November 2023 from Hon Madeleine Ogilvie MP, Minister for Workplace Safety and Consumer Affairs accepting invitation to attend a public hearing to be held on Tuesday 5 December 2023
4. **Tasracing SIP** - Email dated 30 November 2023 from Melissa Fraser, President, Tasmanian Dog Walking Clubs providing information to SIP
5. **Tasracing SIP** - Email dated 30 November 2023 from Tasracing accepting invitation to attend a public hearing to be held on Tuesday 5 December 2023

Outgoing

1. **Tasracing SIP** - Letter dated 28 November 2023 to Hon Felix Ellis MP, Minister for Racing in relation to invitation to attend a public hearing to be held on Tuesday 5 December 2023
2. **Tasracing SIP** - Letter dated 28 November 2023 to Hon Madeleine Ogilvie, Minister for Workplace Safety and Consumer Affairs in relation to invitation to attend a public hearing to be held on Tuesday 5 December 2023
3. **Tasracing SIP** - Letter dated 28 November 2023 Tasracing in relation to invitation to attend a public hearing to be held on Tuesday 5 December 2023
4. **Tasracing SIP** - Letter dated 28 November 2023 to Justin Helmich, General Manager, Office of Racing Integrity in relation to invitation to attend a public hearing to be held on Tuesday 5 December 2023

The Committee received the incoming correspondence and endorsed the outgoing correspondence.

Business arising from incoming correspondence

6. **Tasracing SIP** – Email dated 30 November 2023 from Melissa Fraser, President, Tasmanian Dog Walking Clubs providing information to SIP

The Committee **RESOLVED** to write back to Melissa Fraser in relation to advise the matters raised were outside the scope of the current SIP, but may be considered by a potential future inquiry with broader terms of reference.

TasTAFE extract from Budget Paper 2 Volume 2

The Committee noted the TasTAFE extract.

Other Business

A discussion took place regarding a potential inquiry into Tasports in 2024.

The Committee **RESOLVED** to establish a short inquiry process to further scrutinise TasPorts with the following terms of reference.

That the Legislative Council Government Administration Committee 'A' review and report on matters related to the operations of Tasmanian Ports Corporation Pty Ltd (TasPorts) with particular reference to:

- 1) The engagement undertaken in collaboration with Menzies Institute and University of Tasmania, regarding psychosocial safety, including the findings of this work, and the proposed actions responding to those findings;*
- 2) Workforce related matters;*
- 3) Capital expenditure, asset management and maintenance; and*
- 4) Ongoing financial management including consideration of TasPorts' half-yearly financial results.*

The Committee **RESOLVED** to write to TasPorts advising of the above resolution and inviting their attendance at a public hearing on Wednesday, 27 February 2024 from 2:00 pm – 5:00 pm.

The Committee suspended at 9:37 am

The Committee resumed at 10:05 am

PUBLIC HEARING – TASRACING SIP

At 10:05 am Justin Helmich, General Manager, Office of Racing Industry and Jason Jacobi, Secretary, Department of Natural Resources and Environment were called, made the statutory declaration and were examined.

Questions on Notice

1. Please provide a record of conversations between ORI and Tasracing and Tas Police regarding TasPOL ref 704642, specifically:
 - a. Did Mr Helmich speak to Inspector Greenwood about Constable Hanson's email? And if so;
 - b. When did these conversations occur, that is did this conversation occur before or after 15 February when Greenwood advised that Constable Hanson had handed over the investigation? (LE)

PRIVATE HEARING – TASRACING SIP

At 10:40 am the Committee considered a request for evidence to be taken in-camera.

The Committee **RESOLVED** to take evidence in-camera.

At 10:44 am the Committee proceeded to take evidence in-camera.

Questions on Notice

1. IN CAMERA: Could it be a breach of the licensing conditions that an employee of Mr Yole was under the influence of drugs while driving a vehicle and horse float to transport horses to a race meet? (SL)

The witnesses withdrew at 10:53 am

The Committee suspended at 10:53 am

The Committee resumed at 11:00 am

PUBLIC HEARING – TASRACING SIP

At 11:00 am the Hon Madeleine Ogilvie MP, Minister for Workplace Safety and Consumer Affairs and was called and was examined and Damian Davidson, Department of Justice and Robyn Pearce, Worksafe Tasmania were called, made the statutory declaration and were examined.

Questions on Notice

1. Please provide a copy of the letter from ORI related to concern that employers in the racing industry may not be aware of the requirement for Workers Compensation Insurance. (RF)
2. For what length of time (dates) is it believed that Mr Yole has been operating without workers compensation insurance? (SL)
3. Please provide detail of the Minister/Minister's office contact with Police, Tasracing and ORI related to TasPOL ref 704642.

The witnesses withdrew at 11:50 am

The Committee suspended at 11:50 am

The Committee resumed at 12:18 pm

PUBLIC HEARING – TASRACING SIP

At 12:18 pm the Hon Felix Ellis MP, Minister for Racing and Jason Jacobi, Secretary, Department of Natural Resources and Environment were called and were examined and Dave Manshanden, Chief Operating Officer and Daron Heald, Chief Financial Officer, TasRacing were called, made the statutory declaration and were examined.

Questions on Notice

1. Why did Mr Jenkins proactively contact Inspector Greenwood; and
 - a. what matters were discussed in this or these conversation(s)? (SL).
2. The Committee requests Mr Jenkins provide detail of conversations and other communication between the Minister, ORI, Mr Jenkins and TasPolice in relation to TasPOL ref 704642.
3. Did anyone from Tasracing check whether Mr Yole had workers compensation in place when there was an email exchange about cost of premiums in March/April 2023; and if so
 - a. Who made this enquiry and what action was taken? (SL)

The witnesses withdrew at 1:14 pm

The Committee suspended at 1:14 pm

The Committee resumed at 1:30 pm

PUBLIC HEARING – TASTAFE SIP

At 1:30 pm the Hon Felix Ellis MP, Minister for Skills, Training and Workforce was called and was examined and Tim Gardner, Chair and Grant Dreher, Chief Executive Officer, TasTAFE were called, made the statutory declaration and were examined.

The Committee suspended at 2:55 pm

The Committee resumed at 3:06 pm

Questions on Notice

1. How many (percentage) of the fee free places are going to private RTO's? (LE)
2. How many fee free places are going to RTOs that could be or are provided by TasTAFE? (LE)
3. Please provide:
 - a. student enrolments by Local Government Area (LGA)
 - b. fee free student enrolments broken down by LGA (MG)
4. Where are the additional 40 positions located by geographical area? (MG)
5. Please provide a list of the workforce by gender by level/award across the three employment areas within TasTAFE (RF)
6. What is the timeline for work being undertaken in relation to psychosocial risk? (SL)
7. Over the last twelve months, what is the age breakdown and number of students under the age of 18 who have resided in the residences? (SL)
8. How many students are currently in the residences? (SL)

Tabled Document:

- TasTAFE Staff Survey results

The witnesses withdrew at 4:22 pm

Other Business

The Committee **RESOLVED** to meet on 27 February 2024.

The Committee **RESOLVED** to publish the Hansard transcripts and Parliamentary broadcasts to the GAA webpage.

Next Meeting

tbc

Adjournment:

At 4:43 pm the Committee adjourned.

DATE

18/6/24

CONFIRMED



CHAIR

LEGISLATIVE COUNCIL SESSIONAL COMMITTEE
GOVERNMENT ADMINISTRATION COMMITTEE 'A'

MINUTES OF MEETING

TUESDAY 18 JUNE 2024

The Committee met at 9:01 am in Committee Room 1, Parliament House, Hobart.

Members Present:

Ms Forrest
Mr Harriss
Ms Lovell
Ms Thomas
Mr Vincent

Apologies

Nil

In Attendance

Julie Thompson (Acting Committee Secretary)
Ali Scott (Committee Secretariat)

Order of the Council

The Committee noted the Order of Council dated 23 May 2024.

Election of Chair

The Committee Secretary called for nominations for the *Chair*. *Ms Lovell* nominated *Ms Forrest*.

There being no other nominations, the Committee Secretary declared *Ms Forrest* to be duly elected *Chair*. The Committee Secretary yielded the Chair and *Ms Forrest* took the *Chair*.

Election of Deputy Chair

The Chair called for nominations for *Deputy Chair*. *Mr Harriss* nominated *Ms Lovell*.

There being no other nominations, the Chair declared *Ms Lovell* to be duly elected *Deputy Chair*.

Confirmation of Minutes

The **Minutes of the Meeting** held on Tuesday 5 December 2023 were confirmed as a true and accurate record.

Correspondence

Incoming

1. **GAA** Letter dated 7 December 2023 from Hon Tania Rattray, MLC, Chair, Legislative Council Sessional Committee Government Administration 'B' in relation to potential SIP inquiry into UTAS
2. **CONFIDENTIAL SIP/Tasracing** Letter dated 11 December 2023
3. **SIP/TasTAFE** Letter dated 15 December 2023 from Hon Felix Ellis MP, Minister for Skills, Training and Workplace Growth responding to questions taken on notice at the hearing and requesting a short extension to respond to Questions 3 and 6
4. **SIP/Tasracing** Letter dated 18 December 2023 from Hon Madeleine Ogilvie MP, Minister for Workplace Safety and Consumer Affairs, responding to questions taken on notice at the hearing
5. **SIP/Tasracing** Letter dated 19 December 2023 from Andrew Jenkins, CEO Tasracing responding to questions taken on notice during the public hearing

6. **SIP/Tasracing** Letter dated 20 December 2023 from Justin Helmich, General Manager ORI responding to questions taken on notice during the public hearing
7. **SIP/TasTAFE** Letter dated 5 January 2024 from Hon Felix Ellis MP, Minister for Skills, Training and Workplace Growth responding to questions taken on notice (questions 3 and 6) at the hearing following request for a short extension
8. **SIP/TasPorts** Letter dated 24 January 2024 from Hon Michael Ferguson MP, Minister for Infrastructure and Transport declining invitation to attend public hearing on 27 February 2024 due to Cabinet related commitments
9. **SIP/Tasracing** Email dated 4 February 2024 from Hon Dean Winter MP providing additional information relating to the Tasracing SIP

Outgoing

1. **SIP/Tasracing** Letter dated 5 December 2023 to Melissa Fraser, President, Tasmanian Dog Walking Club in response to a potential inquiry
2. **SIP/Tasracing** Letter dated 7 December 2023 to Hon Felix Ellis MP, Minister for Racing providing questions taken on notice at hearings on Tuesday 5 December 2023
3. **SIP/Tasracing** Letter dated 7 December 2023 to Hon Madeleine Ogilvie MP, Minister for Workplace Safety and Consumer Affairs providing questions taken on notice at hearings on Tuesday 5 December 2023
4. **SIP/Tasracing** Letter dated 7 December 2023 to Justin Helmich, General Manager, Office of Racing Integrity providing questions taken on notice at hearings on Tuesday 5 December 2023
5. **SIP/Tasracing** Letter dated 7 December 2023 to Justin Helmich, General Manager, Office of Racing Integrity providing questions taken on notice IN CAMERA at hearings on Tuesday 5 December 2023
6. **SIP/TasTAFE** Letter dated 7 December 2023 to Hon Felix Ellis MP, Minister for Skills, Training and Workforce Growth providing questions taken on notice at hearings on Tuesday 5 December 2023
7. **SIP/TasPorts** Letter dated 11 December 2023 to Hon Michael Ferguson, MP, Minister for Infrastructure and Transport advising resolution to commence SIP into Tasports
8. **SIP/TasPorts** Letter dated 31 January 2014 to Hon Michael Ferguson MP Minister for Infrastructure and Transport regarding scheduled public hearing on 27 February 2024
9. **SIP/TasPorts** – Letter dated 6 February 2024 to Anthony Donald, CEO and Stephen Bradford, Chairman, TasPorts regarding public hearing preparation for 27 February 2024

The Committee **RECEIVED** the incoming correspondence and **ENDORSED** the outgoing correspondence.

Business

1. Consideration of the Short Inquiry Process into TasTAFE

The *Chair* advised that due to the ministerial reshuffles on the Government Administration Committees, TasTAFE no longer comes under GAA's terms and now comes under GAB's terms.

The Committee **RESOLVED** to re-establish the SIP into TasTAFE and the *Secretary* provide a draft report for the Committee's consideration. Further, a copy of the tabled final report be forwarded to GAB for their possible further consideration.

2. Consideration of the Short Inquiry Process into Tasracing

The *Chair* advised that due to the ministerial reshuffles on the Government Administration Committees, Tasracing no longer comes under GAA's terms and now comes under GAB's terms.

The Committee **RESOLVED** to re-establish the SIP into Tasracing and the *Secretary* provide a draft report for the Committee's consideration. Further, a copy of the tabled final report be forwarded to GAB for their possible further consideration.

3. Consideration of the Short Inquiry Process into TasPorts

The Committee **RESOLVED** to re-establish the Short Inquiry Process into TasPorts and proceed with public hearings.

4. GAA Energy Prices in Tasmania Inquiry (GAA/EPR) (established in previous session)

The Chair reminded Members of the Motion (still under consideration) to establish a Joint Select Committee on Energy Prices and Related Matters Committee which combines the two energy inquiries agreed to in the previous session of the Fiftieth Parliament. The Motion includes the following wording:

'... be authorised to receive all submission received by the Legislative Council Sessional Committee Government Administration 'A' Inquiry into Energy Prices in Tasmania from the Third Session of the Fiftieth Parliament.'

The Committee **RESOLVED** that the Secretary forward all submissions received by GAA/EPR during the Third Session of the Fiftieth Parliament to the Joint Select Committee on Energy Prices and Related Matters Committee (if agreeance from both Houses for establishment is resolved in the affirmative).

5. Short Inquiry Process into the *Financial Management Act*

The *Chair* advised the above SIP was completed in 2023 and the formal Government response has not been received and was due in December 2023 as required under Sessional Order 28(2).

The Committee **RESOLVED** to write to the Treasurer to follow-up on the government response.

Other Business

Future Meeting Dates

The Committee **AGREED** to meet on the following dates:

- | | | |
|----|-------------------------|------------------|
| 1. | Thursday, 4 July 2024 | 3:00pm – 5:00pm |
| 2. | Wednesday, 17 July 2024 | 9:30am – 1:00pm |
| 3. | Thursday, 18 July 2024 | 9:00am – 12:00pm |
| 4. | Monday, 12 August 2024 | 12:00pm – 4:30pm |
| 5. | Friday, 23 August 2024 | 9:00am – 2:30pm |
| 6. | Friday, 30 August 2024 | 9:00am – 2:30pm |

Next Meeting

At 3:00 pm Thursday 4 July 2024

Adjournment:

At 9:26 am the Committee adjourned.

DATE

4 July 2024

CONFIRMED

A handwritten signature in black ink, appearing to read 'F. Jones' or similar, written in a cursive style.

CHAIR

LEGISLATIVE COUNCIL SESSIONAL COMMITTEE
GOVERNMENT ADMINISTRATION COMMITTEE 'A'

MINUTES OF MEETING

THURSDAY 4 JULY 2024

The Committee met at 3:00 pm in Committee Room 2, Parliament House, Hobart and via Webex.

Members Present:

Ms Forrest (via Webex)

Mr Harriss

Ms Lovell

Ms Thomas

Mr Vincent

Apologies

Nil

In Attendance

Julie Thompson (Acting Committee Secretary)

Confirmation of Minutes

The **Minutes of the Meeting** held on Tuesday 18 June 2024 were confirmed as a true and accurate record.

Correspondence

Outgoing

1. Letter dated 25 June 2024 to Hon Michael Ferguson MP, Minister for Infrastructure (Cc to TasPorts Chair and CEO) regarding re-establishment of the Short Inquiry Process into TasPorts and inviting attendance at public hearings.
2. *Letter dated 2 July 2024 to Hon Michael Ferguson MP, Treasurer regarding outstanding formal response to the Short Inquiry Process into the Operations and Application of the Financial Management Act 2016.*

The Committee **ENDORSED** the outgoing correspondence.

The *Chair* advised she had spoken with the Minister, who advised that TasPorts are not available on the dates proposed in July. The Minister advised of their availability on the 2 August 2024 as the earliest date. Discussion ensued.

The Committee **AGREED** the *Chair* will contact the Minister and advise of the Committee's preference to schedule public hearings with TasPorts on or after Friday, 2 August 2024.

Business

1. The Committee considered the draft report in relation to the SIP into TasRacing.

Ms Lovell left the table at 4:26 pm
Ms Lovell took her place at 4:27 pm

Mr *Vincent* left the table at 4:27 pm
Mr *Vincent* took his place at 4:42 pm

Other Business

Nil

Next Meeting

At 9:30 am Wednesday 17 July 2024

Adjournment:

At 4:53 pm the Committee adjourned.

DATE 17/7/24

CONFIRMED

A handwritten signature in blue ink, appearing to read 'P. Anse', is written over the 'CONFIRMED' text.

CHAIR

LEGISLATIVE COUNCIL SESSIONAL COMMITTEE
GOVERNMENT ADMINISTRATION COMMITTEE 'A'
MINUTES OF MEETING

WEDNESDAY 17 JULY 2024 TO THURSDAY 18 JULY 2024

The Committee met at 9:32 am in Committee Room 2, Parliament House, Hobart.

Members Present:

Ms Forrest (Chair)

Mr Harriss

Ms Lovell

Ms Thomas

Mr Vincent

Apologies

Nil

In Attendance

Ramona Long (Acting Committee Secretary)

Confirmation of Minutes

The **Minutes of the Meeting** held on Thursday 4 July 2024 were confirmed as a true and accurate record.

Correspondence

Outgoing

1. Letter dated 5 July 2024 to Anthony Donald, CEO, TasPorts confirming details for appearance at a public hearing in Monday 12 August 2024

The Committee **ENDORSED** the outgoing correspondence.

Business

1. The Committee considered the draft report in relation to the SIP into TasRacing.

The Committee **RESOLVED** that the Report be the Report of the Committee and be published and tabled at the Quorum Call on Friday 2 August 2024.

2. The Committee considered the draft report in relation to the SIP into TasTAFE.

The Committee suspended at 10:38 am and resumed at 10.53 am.

Ms Thomas took her place, after the Committee resumed, at 10.55 am

Suspend

The Committee suspended at 1:01 pm.

THURSDAY 18 JULY 2024

The Committee resumed at 9:02 am in Committee Room 2, Parliament House, Hobart.

Members Present:

Ms Forrest (Chair)

Mr Harriss

Ms Lovell

Ms Thomas

Mr Vincent

Apologies

Nil

In Attendance

Ramona Long (Acting Committee Secretary)

Business

1. The Committee considered the draft report in relation to the SIP into TasTAFE

The Committee **RESOLVED** that the Report be the Report of the Committee and be published and tabled at the Quorum Call on Friday 2 August 2024.

The Committee suspended at 10:32 am and resumed at 10.50 am.

The Committee directed the Secretary to draft letters to Government Administration Committee B regarding the Report on Tasracing and the Report on TasTAFE.

Next Meeting

At 12:30 pm Monday 12 August 2024

Adjournment:

At 11.11 am the Committee adjourned.

DATE

CONFIRMED

CHAIR

APPENDIX B – Transcript of Evidence (5/12/2023)

PUBLIC

THE LEGISLATIVE COUNCIL SESSIONAL COMMITTEE GOVERNMENT ADMINISTRATION 'A' MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON TUESDAY 5 DECEMBER 2023

SHORT INQUIRY INTO TASRACING

The Committee met at 10.04 a.m.

CHAIR (Ms Forrest) - Welcome both of you to the Government Administration Committee 'A' Short Inquiry into Tasracing, with a particular focus on workers compensation for those participating in the industry. We appreciate you coming.

I will give you the rundown. You would probably be aware that this is sworn evidence and everything you say before the committee is covered by parliamentary privilege and that may not extend beyond this hearing. If there were matters of a confidential nature you wish to share with the committee, you can make that request and the committee will then consider that request. Otherwise, it is all public. It is being broadcast. It is being transcribed by Hansard and will form part of the *Hansard*.

Generally, the short inquiry process is a bit like a GBE hearing and at the end of it we will publish the *Hansard* and a short report to outline the findings of the committee in relation to that. It's not a full-on inquiry as we might see from other processes. Do you have any questions before we start?

Mr HELMICH - I do not have any questions, I understand. Thank you, Chair.

CHAIR - If you'd like to take the statutory declaration, and you too, Mr Jacobi, if you're speaking?

Mr JACOBI - I might be speaking, Chair.

CHAIR - If you would like to do it as well.

Mr JUSTIN HELMICH, GENERAL MANAGER, OFFICE OF RACING INTEGRITY and **Mr JASON JACOBI**, SECRETARY, DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT TASMANIA, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - I invite you to make some opening comments, if you wish. Otherwise, we can go to questions. Whichever is your preference?

Mr HELMICH - I am happy to go to straight to questions if you like.

CHAIR - Sure, okay. In terms of the inquiry, it was raised in GBE hearings last week or the week before, and the reason the committee has resolved to invite you in is because it's unclear who has the responsibility for providing workers compensation insurance for those participating in the racing sector. Could you, from your perspective, provide an overview of where you see that?

Mr HELMICH - Thank you for the question, Chair. The Workers Rehabilitation and Compensation Act 1988 is assigned to the Minister for Workplace Safety and Consumer Affairs and subject to the oversight of the Department of Justice. WorkSafe Tasmania is responsible for regulating the act and for ensuring compliance including investigating alleged breaches of the act. In terms of who is responsible for providing workers compensation insurance specifically, section 97 of the Workers Rehabilitation and Compensation Act places an obligation on the employer to maintain in force an applicable policy of insurance in respect to liabilities to pay compensation under the act. An employer who fails to comply is guilty of an offence and is subject to a penalty. Compliance with that act, in my understanding, is regulated by WorkSafe Tasmania.

CHAIR - From that, who do you see as the employer across various sectors of the industry?

Mr HELMICH - Determining workplace compensation insurance, I think, is complex. Specifically, the Office of Racing Integrity does not provide advice in relation to those matters, but it will be a different employer, depending on the circumstances. In some instances - in many instances - it will be a participant if they have workers working in their operation, they may be responsible for it. Certainly, for the stewards and anybody working within the Office of Racing Integrity's remit, the Office of Racing Integrity is responsible. So, they are the stewards, people working in the office and certainly all of my staff. I would be responsible. The secretary would be responsible and then Tasracing would be responsible for the staff within their purview.

CHAIR - When you say participants, can you define what you mean by participants? So we are really clear about whom we are talking.

Mr HELMICH - There are a range of different participants who are licensed by the Office of Racing Integrity. It is complex because it's across a number of different codes of racing. There are three codes of racing: the thoroughbred code, the harness racing code and the greyhound racing code. There are certain participants within each of those codes that are licensed under the Office of Racing Integrity. For example, in the thoroughbred code, we license the trainers across various classifications. We license stable hands, owners to some extent, when they own a horse. In the harness code, we license trainers, stable hands and we also license drivers in that code as well.

CHAIR - Not owners?

Mr HELMICH - I don't believe we specifically licence owners. We register horses but I don't think we licence owners as such.

Mr GAFFNEY - Just a question there -

CHAIR - We'll just cover the greyhounds first and then we'll come back to it, just so we can get the full breakdown of participants.

Mr HELMICH - In the greyhound code, the classifications that we licence are trainers, and, as a general rule, catchers and also attendants; so, they assist in the kennels and those types things.

CHAIR - So, all the people that work in the kennels caring for the dogs?

Mr HELMICH - Correct. Those are the classifications that we licence under the Office of Racing Integrity, but that's different from people who may be employed within each participant's organisation.

That is much broader than that, or may be much broader than that. It may be people working in offices who are not licensed by the Office of Racing Integrity, there may be people undertaking other duties who are not licensed by the Office of Racing Integrity as well. The definition around who is an employer and who is a worker needs to come back to the Workers Rehabilitation and Compensation Act, but from my perspective, I licence a certain cohort of participants within the industry.

Mr GAFFNEY - Could you just expand on the role of a stable hand? Whether that's an apprentice jockey or somebody who mucks out the stalls or looks after the horses? I'd be interested to see what range of - because often those people have dual purpose within the thoroughbred industry. If you could just elaborate or expand on the stable hand issue?

Mr HELMICH - The licence classifications are included within, and this is specifically talking about thoroughbred licensing and it's slightly different for harness, but there are licence application requirements, which are published on the Office of Racing Integrity website.

A stable hand, under normal circumstances would be exactly as you've identified: someone who is mucking out the stables, they might be attending to horses, they are horse animal-related duties, and we licence those people across a range of classifications.

Just to read very briefly from the licence categories, it talks about a stable employee non-riding. It says that, 'The holder of a stable employee licence non-riding may, under the supervision or instructions of a licensed trainer, assist with the training, management, care and control of horses, and assist with pre-race preparation and post-race procedures affecting a horse.'

CHAIR - That could include riding a horse?

Mr HELMICH - There are different classifications for riding and non-riding, sorry, Chair.

CHAIR - I'm sorry to interrupt, keep going.

Mr HELMICH - 'Stable employees are not permitted to mount a registered racehorse, either on the trainer's property or on any registered racecourse unless also registered for track-work riding duties'.

There are a range of different classifications of licences that we provide. We have stable employee non-riding, stable employee who is also a track-work rider, we have classifications for provisional stable hands, so people who have a stable hand's licence but are still awaiting an element of their qualifications. Visiting interstate stable employees are also licensed, and a stable foreperson is also another classification. That is a slightly different classification as well:

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Stable forehand, under the supervision or instructions of a licensed trainer, assist with the training, management, care or control of horses, and assist with pre-race preparation and post-race procedures affecting a horse. Furthermore, a stable foreperson may fulfil the duties for and on behalf of the trainer during the trainer's absence.

We've got a whole range of classifications and licenses that we issue.

Mr GAFFNEY - Just interesting there, you said about a stable hand riding a registered horse on a track, in your first definition. If a stable hand was riding a track in the purpose of helping train another registered horse, do you understand what I'm talking about? So, it's not a registered horse the stable hand is riding. It's an unregistered horse working track-work with another registered jockey and rider. Where would that person's cover for - or where would that sit?

Mr HELMICH - In terms of the licensing?

Mr GAFFNEY - You said something about a stable hand on a registered horse is a different - so, a stable hand on an unregistered horse helping a trainer track-work?

Mr HELMICH - I think it's important to differentiate here, there's a difference between the licensing activities that the Office of Racing Integrity undertakes and of the requirements for workers compensation insurance. As I said, section 97 of the Workers Rehabilitation and Compensation Act deals with who has to have insurance, and that is the employer. The licensing provisions that the Office of Racing Integrity imposes and facilitates are very different sets of circumstances. A lot of those things would be dealt with within the rules of racing. The rules of racing dictate what can and cannot occur in relation to each licence classification and under what circumstance.

Mr GAFFNEY - Thank you, Chair.

Ms LOVELL - You have established that section 97 of the Workers Rehabilitation and Compensation Act is the legal obligation for an employer to hold worker's compensation insurance. I understand it's also a licensing condition for harness racing, that workers compensation insurance is held, a policy will be maintained for paid and voluntary workers if required under state legislation. We have established that it is required under state legislation. Is that a licensing requirement for all those categories of licence that you've outlined for harness racing to start with?

Mr HELMICH - I will go back to what it says under the licensing provisions. Under the harness code, it reflects within the licensing requirements for the thoroughbred code and the harness code. There is no provision in relation to workers compensation in relation to the greyhound code. In the thoroughbred code it says that participants have acknowledged that they will obtain a workers' compensation policy for all paid and voluntary workers if required to do so by state law. In the harness licensing requirements, it says that participants acknowledge that a current worker's compensation policy will be maintained for paid and voluntary workers, if required by state legislation.

That applies to persons applying for licences as trainers only, stable hands; it doesn't apply for trainers only. The important distinction there also is that not every single trainer will

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require a workers' compensation policy. It will depend on the circumstances and the structure of their business as to whether they do. Again, which is why we do not provide advice in relation to what they require and we encourage that they seek independent advice on those things.

Ms LOVELL - That's a general requirement for all categories of trainer licences for harness racing. How does ORI ensure that the trainers that you're licensing do have that workers' compensation policy if that is a requirement of the licence?

Mr HELMICH - In terms of the wording of the requirement or the condition, it acknowledges that a current workers compensation will be maintained for paid and voluntary workers if required. The requirement is for the participant to seek appropriate advice and determine whether or not they need that insurance. It's more of an educational provision rather than an enforcement provision within the licensing requirements.

Ms LOVELL - How do they acknowledge that they will maintain a compensation policy?

Mr HELMICH - In the thoroughbred code there is a tick box acknowledgement included within the thoroughbred licence application form, and that's an online application form. They are required to tick that, and if that's not -

CHAIR - Do they have to provide evidence that they've actually got it?

Mr HELMICH - No.

Ms LOVELL - Is that the same requirement in the harness racing licence application? Is there a tick box?

Mr HELMICH - There is no equivalent tick box on harness application forms. The reason for that discrepancy is not fully clear but it appears an inadvertent oversight that dates back to 2019 when the acknowledgement was actually introduced into the harness code.

Ms LOVELL - One of the conditions is that they acknowledge that there's no actual way for them to do that in applying for their licence, is that what you're saying?

CHAIR - Currently.

Mr HELMICH - I think there is no tick box on their application. I think each of the participants needs to, when they go through their various licensing requirements and the application form - it is included within those forms that the acknowledgement that we've already spoken a fair bit about. In terms of a tick box, no, there is not a tick box.

Ms LOVELL - The requirement is the same between the thoroughbred racing and the harness racing, but one has the tick box and one doesn't. When did you become aware of that discrepancy?

Mr HELMICH - I have only just recently become aware of that discrepancy.

Ms LOVELL - Do you know when? Can you tell me when?

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Mr HELMICH - In the last week.

Ms LOVELL - Okay, and have you taken any steps to rectify that discrepancy? Will there be a change to that?

Mr HELMICH - There will be a change in next year's licensing documentation, correct.

CHAIR - When are the licences renewed?

Mr HELMICH - It's different for each code. For harness racing it starts at 1 August, I believe.

CHAIR - That's quite some time.

Mr HELMICH - That's quite some time, correct. The vast majority of licences get renewed at that period, and indeed, whilst we do undertake licensing activities year-round for ad hoc licences that come in, the vast majority of licences need to be done - or are done - in that period.

CHAIR - Since you have become aware of this discrepancy, have you or will you take any action to require harness racing employees who have the legal obligation to actually provide some documentation or note that they have actually got workers compensation insurance?

Mr HELMICH - Again, I refer back to the general requirement which says that they acknowledge that they will maintain one if they are required to under state legislation. In terms of that, I think I've already stated that they're not required to provide evidence of that at this point in time, even within the thoroughbred code and the harness code, it is simply an acknowledgement. In the thoroughbred code they're required to, within our tick box, and acknowledge that they understand that requirement. The requirement exists within the harness racing requirements as well, and it's just unfortunate that there is no tick box as such.

CHAIR - Do you ever do random audits? Or anything like that to check?

Mr HELMICH - In terms of the thoroughbred code, I think another important thing to reflect on there is I've actually referred this matter to WorkSafe to consider whether or not there's any appropriate action by WorkSafe that needs to be undertaken from a regulatory perspective.

CHAIR - When did you do that?

Mr HELMICH - On 23 November I spoke with the Executive Director of WorkSafe and discussed a broader industry issue in terms of compliance with section 97 of the Workers Rehabilitation and Compensation Act. This conversation was formalised on 29 November with a letter outlining our conversation.

CHAIR - Thank you.

Ms LOVELL - I have a couple of questions. To be really clear, in terms of the licensing condition, it's a condition that somebody applying for a licence acknowledge that they need a workers' compensation policy, if it's required by state law, but it's not a condition that they actually have one?

Mr HELMICH - In relation to the licensing conditions, it's not my view that they - I'll go back a step. Under the thoroughbred code there is a local rule - local rule 15.19 - that talks about - that provides - a requirement within the local rules that - and the local rules are set by Tasracing - which requires that every trainer shall ensure that he maintains workers compensation insurance to cover any of his employees under the workers compensation act enforced at that time, and no person shall have a claim against Tasracing stewards or club in respect of any loss or damage arising out of any race meeting or event. So, it's clear from that rule that there is an intent to ensure that thoroughbred code trainers have insurance to acquit any responsibility under section 97 and stewards can and have dealt with non-compliance in relation to that.

A similar provision does not exist within the harness racing rules and therefore, in terms of regulatory activity that the stewards can undertake, there aren't any provisions that they can rely upon for that. In terms of the licensing requirements, it's my view that the information is provided within the licensing requirement documents for them to acknowledge that they need to undertake their own assessment seeking - with advice from an independent person would be preferable - to make sure that they are compliant with that legislation. Ultimately, it comes back to the provisions under the Workers Rehabilitation and Compensation Act.

Ms LOVELL - Would it be your view that a licence-holder would be in breach of their licence if they did not have a workers compensation policy and were required to?

Mr HELMICH - Look, it's difficult to say. I think it would be very different considering certain circumstances. I think there are provisions and it's a complex licensing and rule framework that we operate in depending on which code you're talking about. Under those circumstances, if I was to consider whether or not someone remained a fit and proper person to continue to be licensed, those are actions that I can take under the various rules across all three codes and that's how it would, as a general rule, be dealt with.

Ms LOVELL - So, a harness trainer who has employees and is required to have workers compensation under state legislation, who has a licence but does not have that workers compensation policy, would they be in breach of their conditions of their licence?

Mr HELMICH - As I say, in terms of action against someone's licence, the most pertinent action for me to take against someone's licence is to conduct an assessment as to whether or not the person remains a fit and proper person to have that licence, and that's action that I would take given whatever the circumstances might be posed. For example, I have taken that action in relation to a thoroughbred trainer this year and determined that that person was no longer a fit and proper person to hold a licence, not in relation to workers compensation insurance specifically, but those are the types of actions that I would undertake.

Ms LOVELL - So, it's possible that a harness trainer - so, speaking specifically about harness racing not thoroughbred racing because of the rules difference - it's possible that a harness trainer who wasn't holding a workers compensation policy, even when they're required to by law, could continue - if you did an assessment and everything else was okay - they could

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continue to hold a licence? My question is, on its own, failure to hold a workers compensation policy when required to by state legislation, is that enough for them to be in breach of their licence?

CHAIR - Not disqualify them.

Mr HELMICH - If that was to be the case, they would be in breach of the Workers Rehabilitation and Compensation Act.

Ms LOVELL - But not their licence? I am asking specifically - workers compensation, we've established that's regulated by WorkSafe - so specifically, ORI's responsible for regulation of licensing? So, their licence, putting aside the legislation, would they be in breach of their licence? Could they be disqualified for that reason only?

Mr HELMICH - The licence conditions are that they acknowledge that a current workers compensation policy will be maintained if required under state legislation.

CHAIR - So, can I just rephrase that -

Ms LOVELL - So, if they didn't have a workers compensation policy when they were required to and they had acknowledged that, are they then in breach of their licence?

Mr HELMICH - If an application came to me that, in the thoroughbred code where there is a tick box and they did not acknowledge that they needed consider that, then I wouldn't licence them.

Ms LOVELL - But if they did acknowledge it, but then didn't take out a policy, what happens then to their licence?

Mr HELMICH - Then, I would deal with that through the fit and proper person test as I've indicated and make an assessment based on the circumstances that existed on the evidence that was available as to whether or not they were a fit and proper person to continue to be licensed.

Ms LOVELL - In the example that everything else they are doing is perfectly fine and exemplary but they don't have a workers compensation policy where they are required to by law, would that be enough for their licence to be cancelled? Would they be in breach of their licence conditions?

CHAIR - Under the fit and proper persons test?

Mr HELMICH - If they continued to not have a workers compensation insurance then I expect it would depend on the circumstances, and I would need to give consideration to it. For example, in relation to the fit and proper person test, there are provisions there and it differs between the codes. In terms of the harness racing code, there are provisions there that if someone fails to abide by all relevant legislation then that is something that I can consider in terms of whether someone is a fit and proper person. In that instance, if they had indicated that they, and there was evidence to indicate that they have not complied with section 97 of the Workers Rehabilitation and Compensation Act, then that will potentially provide grounds for me to determine that that person is not a fit and proper person.

Ms LOVELL - Thank you, I wanted to specifically explore the set of circumstances around Yole Stables and Ben Yole as the licensed trainer. When did you become aware that Mr Yole did not have a workers compensation policy in place?

Mr HELMICH - Chair, can I suggest that perhaps some of this conversation might go in camera? There will be matters, I expect, that will be discussed here which may be subject to actions either by the Office of Racing Integrity or alternatively, potentially, WorkSafe.

CHAIR - Can we just park this question towards the end of the hearing? We'd like to do as much in public as we can and then we will allow the time for that to be considered.

Ms LOVELL - Yes, we can come back to that.

CHAIR - Can I just follow up one question I asked and I will go to you, Luke. I did ask, and we sort of got diverted, about whether you undertake any audits. The requirement to meet that section 97 of the Workplace Health and Safety Act.

Mr HELMICH - Certainly, I did have a note in relation to that. In relation to thoroughbred rule 15.19, in 2021-22 the Office of Racing Integrity undertook a compliance assessment in respect of compliance with local rule 15.19 and the licensing requirements. The compliance assessment revealed that there was a high percentage of trainers who had a level of insurance coverage. In the same year, Tasracing provided a significant financial assistance to thoroughbred trainers, reimbursing the cost of insurance policies taken out by trainers and a similar arrangement was put in place by Tasracing in 2022-23 and therefore, a subsequent audit was not done in either of those years. A full order of compliance is scheduled for the 2023-24 financial year.

CHAIR - And you undertake that, your office undertakes that, or is that an external audit of it?

Mr HELMICH - No, my office did that.

Mr EDMUNDS - So, we have the RTI and obviously there was some media coverage that showed that a constable from Exeter Police Station, Constable Hanson, writing to Tasracing regarding the crash at Rowella, in which five young people were involved and four horses died. Was anyone in ORI involved with the response from Tasracing in which Constable Hanson was taken off the case? Was there any engagement between ORI and Tasracing about these circumstances?

Mr HELMICH - In relation to having Constable Hanson taken off the case, I can indicate - perhaps if I could speak generally in relation to my actions in relation to the circumstances surrounding the accident, and I may need to take the question on notice but I can provide - I spoke with a member of the Department of State Growth in relation to transport compliance. There had been a suggestion made there were more horses within the horse float than were allowed for within that horse float. I undertook a number of enquiries in relation to that matter.

If I recall, I also spoke with Inspector Stuart Greenwood in relation to what matters might be. Inspector Stuart Greenwood, as I understand, is from the district support services group in

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the northern district. He is in charge of accident investigation and the traffic branch. I spoke with him in relation to what the response from police would be and whether or not there would be any requirement from the Office of Racing Integrity to be engaged in that.

Mr EDMUNDS - The police response was to take that constable off the case. You are confirming you had conversations about this specific shuffling of who was actually investigating this?

Mr HELMICH - That is not what I said.

Mr EDMUNDS - There were conversations involved during that process?

Mr HELMICH - As I said, I had a conversation with Inspector Greenwood, but I did not have any conversations in relation to taking anybody off any case.

Mr EDMUNDS - You did speak about the investigation itself?

Mr HELMICH - I spoke with Inspector Greenwood in relation to the matters as they related to the Office of Racing Integrity. I was specifically interested in the complaint we had received that there were more horses on the horse float than were allowed for, within that horse float.

Mr EDMUNDS - Specific to the circumstances in the police RTI, did you have any conversations with Mr Jenkins, the CEO of Tasracing, or anyone else at Tasracing, about the process that was obviously under way between them and Tasmania Police?

Mr HELMICH - I expect that I would have had a discussion with Mr Jenkins in relation to this issue generally.

Mr EDMUNDS - Thanks.

Ms LOVELL - During the GBE hearing on 22 November with Tasracing, it became clear there was not a workers compensation policy in place for Ben Yole Racing and an agreement couldn't be reached about who was responsible for ensuring participants were covered by a relevant workers compensation policy.

By Friday 24 November - two days later - there was a race meet. It appears there had been some advice provided to Ben Yole Racing, because staff were advised their employment was being transferred to a labour hire company called Complete Workforce Solutions.

Was ORI involved in providing advice to Mr Yole that he needed to hold a valid workers compensation policy to be able to race that night?

Mr HELMICH - Again, can I suggest this might be taken in camera? Because this may reflect on some matters that may be reviewed by WorkSafe, potentially.

CHAIR - We can consider this a little bit later, perhaps. Are there other areas of inquiry outside Mr Yole's activity? We will go back to that, we will take another five minutes because we haven't got a lot of time left.

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Mr EDMUNDS - Going back to the RTI on the correspondence between Mr Jenkins and Acting Inspector Greenwood. You said you have had some conversations with both those parties. Did you help facilitate them contacting each other directly? Was it a recommendation you made that they speak to each other?

Mr HELMICH - Mr Jenkins and Inspector Greenwood?

Mr EDMUNDS - Yes.

Mr HELMICH - I don't recall that specifically.

Mr EDMUNDS - For instance, when you said you had the conversations with Mr Jenkins, potentially you suggested that might be the best person to speak to about this matter.

Mr HELMICH - As I said, I would have had a discussion with Mr Jenkins. I do not recall the specifics of the conversation. Of an incident of that magnitude, it's likely I spoke with the CEO of Tasracing in relation to it and in relation to what response should be undertaken and whether or not there were any issues to deal with. It is likely I did have a discussion with Mr Jenkins, yes.

Mr EDMUNDS - You gave him advice on who might be the best person to contact at Tasmania Police about the issue.

Mr HELMICH - I do not recall that specifically.

Mr EDMUNDS - You do not recall specifically giving him advice that perhaps it might be worth escalating this issue to acting inspector level?

Mr HELMICH - I don't recall that conversation specifically.

Mr EDMUNDS - Do you have any personal relationship with Acting Inspector Greenwood that might've made you think that would be a good place to refer Constable Hanson's investigation?

Mr HELMICH - I know Acting Inspector Greenwood. I have a work relationship with Acting Inspector Greenwood from a previous work career. In terms of your suggestion I would interfere in something like that, I deny that.

Mr EDMUNDS - It's just a question, because more broadly when we have these inquiries we want to know what conversations have actually occurred. We're within our rights to ask the question and that's why I asked the question. I guess we aren't going to get the information out of you about what you specifically spoke to Mr Jenkins about or Acting Inspector Greenwood, is that what we can assume? Just that the conversations took place?

Mr HELMICH - I'm happy to go back and review what information I've got within my records on this -

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Mr EDMUNDS - I'm not particularly concerned about a paper trail. I'm more interested in perhaps some informal advice people often have. That's fine but we want to know the context of any informal advice that might've been provided to either of those parties.

CHAIR - In order to close this off, as we need to go to the other matters, perhaps we should - in the first instance - write to you to ask you to provide any memos or meeting notes, dates and times that you have discussions with Mr Jenkins?

Mr HELMICH - I'm happy to do that, Chair.

Mr EDMUNDS - I think we have unearthed all we will this morning.

CHAIR - With regard to the request to go in camera to discuss the matter related to Mr Yole, if you could just step outside for a moment and we'll clear the room so we can deliberate on that matter. Stop the broadcast.

The committee suspended from 10.42 a.m. to 10.53 a.m.

CHAIR - We will start the broadcast. We will close this off because we have the minister for workplace safety, waiting to come in. Thank you for your time today. We will ask you to review the transcript to see, particularly the earlier evidence that was given around the statement of dates and facts. I feel, personally, that may not warrant that confidential lens after we have access to *Hansard*.

Mr HELMICH - Certainly.

CHAIR - We will also write to you with those questions on notice.

Mr HELMICH - Thank you, Chair.

CHAIR - Thank you. Stop the broadcast.

THE WITNESS WITHDREW.

The Committee suspended at 10.54 a.m.

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The committee resumed at 11.00 a.m.

CHAIR - Welcome, minister, and thank you for appearing before the Government Administration Committee 'A' short inquiry into Tasracing, particularly with regard to the workers compensation matter that has been raised in GBE hearings recently. It is a short inquiry process that's a bit like a GBE process in that we have a hearing, attach the *Hansard* and minutes to a report without a lot of other work to determine whether there needs to be further inquiry.

You understand the process: you're sworn already. I will get your two team members to swear in a moment. For the members who aren't you, everything you say before this committee is covered by parliamentary privilege that may not extend beyond this committee. It is a public hearing, it's being broadcast and transcribed by Hansard but anything you say outside the committee may not be covered by such privilege. If there are matters of a confidential nature you wish to raise with the committee you can make that request and the committee will consider that. Otherwise, it's all a public session.

Hon MADELEINE OGILVIE MP, MINISTER FOR WORKPLACE SAFETY AND CONSUMER AFFAIRS, WAS CALLED AND EXAMINED.

Ms ROBYN PEARCE, (VIA WEBEX), EXECUTIVE DIRECTOR, and **Mr DAMIAN DAVIDSON**, DIRECTOR OF COMPENSATION SCHEMES, WORKSAFE TASMANIA, WERE CALLED AND EXAMINED.

CHAIR - I invite you to make an opening comment if you wish.

Ms OGILVIE - Yes, I do. I have done a little bit of prep, I understand the genesis of this inquiry. I'd like to again thank you for the opportunity to address the committee in relation to the workers compensation issue in particular with racing. It is my understanding that the particular focus of this short inquiry process is to clarify who is responsible for obtaining workers compensation insurance within the industry, how it's enforced, and there might be other broader questions too.

I have introduced my departmental representative at the table today, Damian Davidson, Director of Compensation Schemes at WorkSafe Tasmania, thank you very much for your attendance. By video conference, you are aware that we have Robyn Pearce, Executive Director of WorkSafe Tasmania, who is also the independent Work Health and Safety Regulator in Tasmania.

I would like to start by giving a short overview of workers compensation in Tasmania and how it applies to the racing industry and other matters, then I'd be happy to answer questions as I can and as they are put.

Workers compensation is regulated in Tasmania under the Workers Rehabilitation and Compensation Act 1998. We will be talking about this act quite a bit I think today, so I am going to refer to it as the WRC Act. Workers compensation is compensation payable under the WRC Act to a worker who suffers injury or disease arising out of or in the course of the worker's employment. For disease, the worker's employment must have contributed to substantial degree.

In some circumstances, a worker may also make a common law claim. We might discuss a little bit how those two things work in concert today. Under the WRC Act, an employer must either take out an insurance policy with a licensed insurer to cover it for workers compensation claims made by its workers or apply to the WorkCover Tasmania board for a permit to self-insure it against workers compensation claims made by its workers.

Importantly, an employer who fails to comply with that requirement is guilty of an offence and is liable to a fine not exceeding 500 penalty units as a result of a prosecution, and an infringement notice may also be served for non-compliance with a fine of two penalty units for an individual, or five penalty units. The WorkCover Tasmania board, which you'll hear a little bit about today, has the function to educate and promote awareness of then WRC Act, and the Secretary of the Department of Justice appoints authorised officers to ensure employers comply with their obligations under the WRC Act.

The workers compensation fund provides funding for these compliance and enforcement functions. WorkSafe Tasmania, in the Department of Justice, undertakes the regulatory activities in relations to the workers compensation scheme, and WorkSafe Tasmania is also home to the independent Work Health and Safety Regulator under the Work Health and Safety Act 2012, I'll refer to that act as the WHS Act. We have two key acts and I have them here today.

The Executive Director of WorkSafe Tasmania is both responsible for regulating the workers compensation scheme on behalf of the board and undertaking the functions of the independent regulator. I'm sure as we go through the hearing today, you might be talking about the regulatory activity of both or one or either of these acts, which are performed independently of government, in which case I'll seek to refer that to the appropriate person. WorkSafe Tasmania will do their best to make it clear what regulatory hat they're wearing at that time. If there's any confusion of that please do hold us up and ask the question.

Coming back to the WRC Act, the legislation does also contain a mechanism of last resort and I want to draw this to your attention. I think we'll be discussing it as well. This mechanism is called the nominal insurer, you might've heard about it already this morning, if not we can go into more detail.

Also, no doubt we'll be looking at how workers compensation specifically operates in the Tasmanian racing industry. I think it is appropriate that the WRC Act contains specific provisions in relation to jockeys and apprentice jockeys who are deemed to be workers through changes introduced in 2007 to the act: Tasracing Proprietary Limited is deemed to be their employer for the purposes of workers compensation.

For other workers in the industry, their employers are responsible for the payment of workers compensation and are required nonetheless to hold a workers compensation insurance policy. Importantly, volunteers are not generally covered by workers compensation unless engaged in the police, fire, ambulance or emergency services and that's set out in the act. Whether a person is a worker, or is claimed to be a volunteer or covered by other contractual arrangements, which is contended to make them not eligible for workers compensation, is a matter of law.

These matters, as you know, are determined by the personal injury stream of the Tasmanian Civil and Administrative Tribunal (TASCAT), and we know that a recent TASCAT

decision in relation to one of the young people who work for Ben Yole Racing Proprietary Limited, and who was very, very sadly seriously injured in the vehicle incident on 30 January 2023, found that the person was entitled to workers compensation by holding that the claimant was injured in the course of his employment either on the basis they were doing the actual work, or on the basis that he was doing something that he was reasonably required or expected to do by way of carrying out his duties.

Employers in the racing industry are required to hold workers compensation insurance policies. I have some details on the numbers: WorkSafe Tasmania's record show that 35 employers held workers compensation policies in 2022-23, covering 116 workers. WorkSafe, however, does not hold information on how many employers operate in each Tasmanian industry to undertake a comparative analysis to identify gaps. That might be something that you wish to turn your minds to today.

As a result, WorkSafe's workers compensation compliance and enforcement activities are usually undertaken in response to complaints under the WRC Act, or incident notifications under the WHS Act. WorkSafe Tasmanian inspectors are authorised officers under the WRC Act, as well as being appointed inspectors under the WHS Act. Again, I say we have these two key pieces of legislation that operate in concert.

Inspectors follow up every workers compensation complaint. When they are attending the workplace, they request evidence that the employer holds a workers compensation insurance policy, or they must issue a notice requiring the evidence to be provided.

In the last three years, there have been three workers compensation complaints relating to the racing industry made to WorkSafe Tasmania, two of these are currently under investigation. I'm advised that Ben Yole and Ben Yole Racing Proprietary Limited are being investigated by WorkSafe in relation to alleged breaches of the WRC and the WHS Act.

CHAIR - Is that under the two that are under investigation?

Ms OGILVIE - Yes, for details I had better refer to Robyn. I am almost done. I know you want to get to more specific questions. I should also underline that WorkSafe has advised me the information which has been obtained in relation to current investigations cannot be disclosed in this hearing unless, perhaps, in camera. We will cross that bridge depending on the questions you ask.

WorkSafe Tasmania has also advised me they have received correspondence from the Office of Racing Integrity referring their concerns to WorkSafe that employees in the Tasmanian racing industry may not be aware of their statutory obligations to hold a workers compensation insurance policy and, thus, may not be compliant with the WRC Act. As the regulator, WorkSafe is considering this referral and planning a proactive compliance campaign to be undertaken in the first half of 2024.

That concludes my opening statement, but I am aware that there is complexity. It is quite a dense legal area. I am very happy to work through specific questions, noting we have Robyn Pearce here who is the expert and Independent Regulator and Damian available to talk through how compensation claims work and how it is operationalised.

CHAIR - The letter from ORI, have you got a copy of that?

Ms OGILVIE - Not here.

CHAIR - Would you be able to provide it?

Ms OGILVIE - That is a letter to Robyn Pearce. She is the Independent Regulator, is it all right if I ask her?

CHAIR - Yes.

Ms OGILVIE - Robyn, may I refer that question to you?

Ms PEARCE - Yes, thank you, minister. Given the nature of this inquiry, I believe I am able to release a copy of that to you.

CHAIR - We will write to you following that up, requesting that formally.

Ms LOVELL - I understand that Ben Yole Racing is being investigated under both the Workers Rehabilitation and Compensation Act and the Work Health and Safety Act. Has WorkSafe Tasmania received any other complaints or notifications under either of those acts about safety in the racing industry generally?

Ms OGILVIE - Again, with your approval, Robyn, if I might refer that to you, if that is okay?

Ms PEARCE - Yes, certainly. I will go to the relevant piece of information. In relation to Work Health and Safety generally we have received three complaints over the last three years relating to Work Health and Safety. One of those related to Ben Yole Racing and the other two related to other PCBU's (Persons Conducting Business or Undertaking).

Ms LOVELL - After the crash that you spoke about earlier, minister, it became clear that the people involved in that had been working for 20 hours straight. As minister for Workplace Safety, do you consider that to be a safe working environment?

Ms OGILVIE - I think your question goes to the fatigue issue. Obviously, we want everybody to be as safe as possible. I understand that there have been some discussions around the issue of fatigue. I know that Robyn has some commentary to make on that but I would like to say that the distress of young people involved in a crash is beyond words. Anybody conducting a business in any industry has to provide a safe working environment. They have a primary duty of care to do so as far as is reasonably practical to ensure the health and safety of workers while those workers are at work. To comply with this, duty hazards in the workplace must be identified. Risks associated with those hazards including that issue of fatigue must be managed through the application of the hierarchy of controls.

My personal view is we need to be as safe as possible. Everybody deserves to be safe at work and I quite often say, safety first. I will refer this to Robyn, who will be able to add some additional information.

Ms PEARCE - Certainly, fatigue is a risk in a number of industries including the Tasmanian racing industry due to the fact that the nature of the work can involve early and/or

long shifts, harsh environmental conditions and prolonged or intense mental or physical activity. PCBU's, as we call them, persons conducting businesses or undertakings in the industry, have an obligation to put in place control measures to eliminate or minimise the risk of fatigue. Those control measures can include things such as work scheduling, how the shifts and rosters are structured, what the job demands are, environmental conditions and a number of unrelated factors as well.

There are codes of practice in relation to the - sorry, not a code of practice - a guide is available from Safe Work Australia on managing the risk of fatigue at work and that document is available publicly from Safe Work Australia's website. In relation to the particular matter at hand, in terms of Ben Yole Racing Pty Ltd and the really sad incident that occurred, fatigue is certainly one of those matters which is being considered as part of the investigation.

Ms LOVELL - This is probably a question for Robyn, but through you, minister, are you able to provide the committee with an update on that investigation?

Ms PEARCE - Certainly. The investigation is well progressed. There is some further work still to do on it. We are expecting it to be completed in the next three to six months.

Ms LOVELL - I understand that as part of that investigation, WorkSafe Tasmania has issued a notice to produce documents to Tasracing as part of that, seeking a number of documents including induction documents and fatigue management policies. Has Tasracing provided you with those documents?

Ms PEARCE - I don't have that detail in terms of exactly what has been provided as part of the investigation. That is being handled by our investigator that is responsible for it.

Ms LOVELL - Is that something you might be willing to take on notice, minister?

Ms OGILVIE - Of course I'll take things on notice, but I just want to be careful in case - it's an active investigation which is being completed by WorkSafe - it's not actually within my control to release documents that are in their control, so I just seek some guidance on that.

CHAIR - We have to request matters through you, minister, but you can then refer it to whoever you need to. If Robyn, for example, felt that it should be released only in camera, she can make that request when she provides those documents. Our committees have respected those requests.

Ms OGILVIE - Thank you very much. I think that is the answer, so I'm very happy to do it within that context.

CHAIR - We'll follow up with that, including the letter.

Ms LOVELL - Minister, I understand the driver involved in that incident is facing court and I'm mindful of the fact that those proceedings are under way, but it's public knowledge that she's been charged with two counts of causing grievous bodily harm, a count of driving without due care and attention, a count of driver failing to ensure passenger was wearing a seatbelt, and a count of towing a trailer without brakes.

I understand that to date there have been no charges laid against the owner of the business who supplied the vehicle and who required this young woman to work almost 20 hours straight and then drive a horse float, a vehicle towing a horse float. Are you aware of any potential charges under either of these acts for the employer involved?

Ms OGILVIE - Again, I ask Robyn to speak to that as the independent investigator.

Ms PEARCE - Certainly, the focus of the investigation that is being undertaken by WorkSafe is considering whether or not the PCBU has been complying with its duties under the act, including its primary duties as an employer to ensure the safety and health of the workers within that business or those who are affected by the work it carries out. Whether that is going to constitute charges or not will be a matter that will come once the investigation is completed, or the information is analysed and considered against the requirements of the legislation. The file will be referred to the DPP. The Director of Public Prosecutions will make the decision in relation to whether charges should or shouldn't be brought.

Ms LOVELL - Minister, there has been some disagreement, I suppose I could put it, as to who is responsible for ensuring compliance with holding workers compensation insurance between the Office of Racing Integrity, Tasracing and WorkSafe Tasmania. Do you believe that that is the responsibility of WorkSafe Tasmania, as the regulator for the act, to ensure that employers who are required to hold adequate workers compensation insurance do in fact do so?

Ms OGILVIE - The act requires under section 97 that workers compensation insurance is held and there's a fairly substantial penalty for not doing that. That is 500 penalty units and the penalty unit is currently \$195 so that equates to about \$97 500 as the penalty. That is the regulatory mechanism by which this can be enforced.

I will ask Robyn for her views from a WorkSafe Tasmania perspective and I won't speak on behalf of her. I also believe that - and I have always said this - wherever there is need for more communication, better communication, we can do that. My mind is open to those issues and reform. I have some powers -

CHAIR - If I can perhaps restate the question, in case we're getting too far off the question. The question was: who is responsible? There's been some confusion, as Sarah said, around who is responsible to ensure that workers do have the appropriate workers compensation insurance. Who is responsible for that?

Ms OGILVIE - The company, the employer is responsible for having workers compensation.

CHAIR - Who is responsible for ensuring that workers have that?

Ms OGILVIE - If they do not have it, if they breach the law by not having it, then WorkSafe has the regulatory function. We will ask Robyn to speak to that. I was not here for the earlier piece. Thank you, Robyn. Hopefully I've captured that correctly.

Ms PEARCE - Thank you, minister. That is correct. The Secretary of the Department of Justice has a responsibility for appointing authorised officers to undertake the compliance and enforcement activities as they relate to the Workers Rehabilitation and Compensation Act.

PUBLIC

Under delegation, inspectors are appointed as authorised officers and they undertake the compliance and enforcement activities associated with ensuring compliance with the statutory requirements of the act.

CHAIR - That said, has the regulator undertaken any audits, particularly with some concerns raised about the racing sector, of all employers in the racing sector? I note who may be required to hold workers compensation insurance. Have authorised officers proactively undertaken some work around that?

Ms PEARCE - In terms of determining the activities that are undertaken by WorkSafe inspectors, we use national compliance and enforcement policy to help us to prioritise where we put our focus. Our primary focus goes initially to those matters where there has been serious injury or harm, or the likelihood of serious injury or harm, and then we have a cascading effect. Most of our focus goes into responding to notifiable incidents and complaints in the workplace. We undertake proactive campaigns where we can. As this matter has been brought to our attention now, about a concern that there may be a lack of understanding in the industry, we are putting in place a proactive compliance campaign that we will run out in the first six months of next year in order to audit whether or not employers are aware of their obligations and to ensure that there is compliance with those obligations.

Ms LOVELL - Minister, we've heard from the Office of Racing Integrity this morning that it's a condition or a requirement for licensing that those who are required to be licensed acknowledge that there's workers compensation, but it is not actually a requirement for them to hold that workers compensation. It's a requirement for them, that's what we have been told this morning by the Office of Racing Integrity. Do you have a view on whether licenses should be issued without confirming that those policies are in place?

Ms OGILVIE - I think you need to put that question to the Minister for Racing, that sits within the racing sector.

Ms LOVELL - I would like your view as the Minister for Workplace Safety.

Ms OGILVIE - What I would say is that it's a very clear legal requirement. It's there in black and white.

Ms LOVELL - It's a clear legal requirement under the Workers Rehabilitation and Compensation Act but under the licensing requirements for Tasracing, as the minister for Workplace Safety, do you believe that it should be a requirement of the licensing that there is some evidence provided of those workers compensation policies?

Ms OGILVIE - I have a personal view. I'm not the Minister for Racing and no doubt you'll hear from the Minister for Racing. But anything we can do to make people aware and make sure that they're doing what is their legal obligation, I think we ought to be doing. I think you just heard from Robyn that they are doing some work on that.

CHAIR - I hear what you're saying, minister, but it obviously carries a very high penalty.

Ms OGILVIE - Yes, it does.

PUBLIC

CHAIR - It is a serious matter and if someone can get a licence without it and not be in breach of that licence, would that concern you, from a workplace health and safety position?

Ms OGILVIE - Anybody who breaches this very clear regulatory requirement is in breach of the law and subject to a penalty up to 500 penalty units. This is where it stops with the law and stops with this act. This is the peak regulation that applies.

CHAIR - Yes, I understand that. Not meeting that requirement in the act, do you think that would -

Ms OGILVIE - It gets you a big penalty, yes.

CHAIR - In terms of assessment as a fit and proper person to continue operating in an industry, would that be something that, to you in your mind, would be a fatal flaw?

Ms OGILVIE - I am very concerned to make sure that everybody who is covered by this legislation is doing the right thing and that is why we have WorkSafe and others. As to how the licencing regime in racing works, I would have thought that compliance with the law is a basic.

Ms LOVELL - When did WorkSafe, or you as minister, become aware that Ben Yole did not have workers compensation insurance?

Ms OGILVIE - As incoming minister for - and I am fairly new minister for workers compensation - I believe it was when I came in my briefings on this matter, so fairly recently. Given Robyn has active investigations on this, we might also ask WorkSafe that question.

Ms PEARCE - According to our records we became aware of it on 30 January this year, which is the date of the incident.

Ms LOVELL - At that stage, you were aware there was no workers compensation insurance held by Ben Yole?

Ms PEARCE - We became aware of the fact as a result of our inquiries following the investigation, following the incident, that Ben Yole did not hold a policy or workers compensation.

Ms LOVELL - Was there any communication between WorkSafe Tasmania and Tasracing or the Office of Racing Integrity about that failure to hold worker's compensation insurance, given that it's a requirement of the licencing?

Ms PEARCE - We wouldn't communicate that with Tasracing or ORI as that is not our remit. We would communicate directly with the employer.

CHAIR - Then you did communicate that to the employer, I assume, once you became aware, to Ben Yole?

Ms PEARCE - I don't have the details of that but the nature of the conversation would be asking him for evidence of that policy of insurance.

PUBLIC

Ms LOVELL - Presumably that's part of the investigation - that breach of section 97 - that's under way?

Ms PEARCE - That is correct. There are two investigations being undertaken because Ben Yole existed as two separate legal entities over the period of time that we believe may have not been insured.

Ms LOVELL - Can you share with us how long that period of time is?

Ms PEARCE - I don't have that detail here and if I was to, I would need to do that in camera.

Ms LOVELL - Thank you. I understand that Ben Yole's staff have now been transferred into the employment of a labour hire company based in Moonah, Complete Workforce Solutions. Whose responsibility, minister, do you think it is to ensure that Complete Workforce Solutions has adequate workers compensation insurance to cover the activities that those staff will be undertaking, given that there's a pretty broad range of cover?

Ms OGILVIE - As an employer they'd be covered by section 97.

Ms LOVELL - It is WorkSafe's responsibility to ensure compliance with that?

Ms OGILVIE - It is the law. They have to comply with the law.

Ms LOVELL - You can say they have to comply with the law, but who is checking that they are?

Ms OGILVIE - Sure, that is the section 97 question, again, it's the same. I am happy for Robyn to contribute as well.

Ms PEARCE - The question for WorkSafe is whether or not they hold a policy of insurance, not the extent of that policy of insurance. The employer, Complete Workforce Solutions, is required to hold a policy of insurance that would cover all of the workers who are within that business. We would not go in and make inquiries as to what is the extent of that insurance, that is their obligation in order to hold that policy of insurance.

Ms LOVELL - Do you think it should be the responsibility of the Office of Racing Integrity or Tasracing to ensure that policy covers the activities they're undertaking, or is it just assumed we wait until somebody is injured or worse and then they find out they're not covered, what's the outcome?

Ms PEARCE - If the business holds a policy of insurance, then that business is required to notify the insurer of any changes in the nature of its business and have any amendments made to its policy of insurance, that may well be necessary to be undertaken. These are things that happen in the course of any normal business. We would not necessarily be aware of those changes in order to go in and make inquiries every time there is a change in the way in which a business is structured which may affect the nature of its workers compensation policy.

Ms LOVELL - Is anybody, organisation or regulatory body responsible, or have oversight of ensuring employers have adequate workers compensation? It might be that the answer is no.

Ms PEARCE - The act requires the employer to hold adequate workers compensation-

Ms LOVELL - Yes, I understand it's the law, my question is is there anybody responsible for ensuring employers are complying with that requirement under law?

Ms PEARCE - WorkSafe Tasmania is responsible for regulating that legislation, so if there is a body it sits with WorkSafe Tasmania. Does WorkSafe Tasmania conduct inquiries into whether employers are maintaining adequate coverage as the nature of their business changes? Given the number of businesses that exist within Tasmania, 41 000 businesses, 98 per cent of them being small business, it is not possible as a regulator for us to consistently be enquiring with businesses that a policy they hold is adequate for the number of workers.

That is their responsibility to do, we become aware of it should there be complaints or issues raised. It's just a sheer matter of capacity to be able regulate across all the regulatory functions there are.

Ms LOVELL - Is that something WorkSafe would potentially investigate if the issue was raised? If there was a concern raised without something having happened - necessarily - that something WorkSafe could inquire into and potentially be some enforcement of that?

Ms PEARCE - Yes absolutely. If a complaint was raised with us we would act.

CHAIR - One question to clarify a point you made. Robyn, you said it's the employers responsibility to notify their insurer should the nature of their work change. If a labour hire firm, for example, who hasn't worked in racing possibly, then takes on racing workers which obviously is a higher risk workforce than some others, do you actually check them? They've got to notify you, but then wouldn't that trigger an expectation that insurance would be adequate?

Ms PEARCE - They don't notify us that the nature of their insurance has changed or the policy has changed. Damien may have some more details on exactly how that operates because he's much closer to that side of it. WorkSafe isn't notified anytime there is a change in the nature of it as an employer being required to give us an individual notification.

We collect information from insurers which covers the nature of the policies they have issued. Damien do you have anything further on that?

Mr DAVIDSON - Workers compensation insurance is a contractual arrangement between the employer and the insurance company. As to what information about what changes to their circumstances a certain employer might need to tell their insurer is part of the contract. By and large, it's not going to change materially the coverage of the workers, so the employer -

CHAIR - Despite the risk of it, I mean, if you had someone go from some low-risk employment to then having workers in construction, which is another risky area, there would be no expectation that that risk would be assessed separately?

Mr DAVIDSON - That would be a matter between the employer and the insurer as part of that contract of insurance as to what the employer would need to notify the insurer about, and that would mean is there is a change in risk, is there a change in the amount of premium that is paid, et cetera. That is just part of the contract. That does not change the -

CHAIR - The obligation?

Mr DAVIDSON - The obligation and who would be covered, et cetera.

Ms LOVELL - I wanted to go back to the investigation currently under way into Ben Yole Racing. Understanding that WorkSafe Tasmania became aware on the 30 January that he did not have or might not have workers compensation insurance and - accepting that there is an investigation still under way - we are now some 11 months down the track. How is it possible that he has been allowed to continue to operate without workers compensation insurance when he has only just been notified last week that he needs to have it by Tasracing?

Ms OGILVIE - This goes to the investigation that is under way. Robyn, I will ask you to start. We will see if we can get you an answer.

Ms PEARCE - From the investigation perspective, it is looking into gathering all the detail to prove the evidence that he has not held, that he is required to hold that policy of insurance. If he continues not to hold it, the only thing that we can do is to prosecute for it. We cannot stop a business from operating because it does not hold a policy of insurance. We can only prosecute them for that failure.

Ms LOVELL - You have become aware on the 30 November that he did not hold workers compensation insurance, but he has not yet been prosecuted, so he has been able to continue to operate without insurance.

Ms PEARCE - Because we are conducting the investigation in order to be able to prove that fact because it has to be prosecuted in the courts in order for him to be found guilty. At this point in time, it is an allegation that has to be proven in order for the prosecution to then actually be undertaken and for the employer then to be found guilty.

Ms LOVELL - It seems fairly high risk though to allow him to continue to operate for 11 months. It should be fairly simple for him to prove whether he has workers compensation insurance or not from the date that you became aware that he did not have it. There is nobody that can? My question is, why is he able to continue to operate for such a long period of time, with people at such high risk, without adequate insurance when it was known on the 30 January that he did not have it?

Ms PEARCE - The legislation does not make any provision for us to stop a business from operating if it does not hold a workers compensation policy. All we are able to do is to prosecute them for the failure to hold that policy.

Ms LOVELL - Is it your view, minister, that that could be done under licensing laws?

Ms OGILVIE - What I might do is ask Damian to also speak about the process, but before I do that -

Mr EDMUNDS - We are really running short on time and - I am speaking at the moment, thanks -

Ms OGILVIE - I'm sorry. I was just answering a question.

Mr EDMUNDS - We have 10 minutes left and I have not been able to ask a single question.

CHAIR - Let us just go to Damian's comments.

Ms OGILVIE - I cannot talk about Tasracing matters; they are for the Racing minister. What I will say is the act is very clear. I think where you are going to is the question of the duration of the investigation because that is the mechanism by which -

CHAIR - It's really about who's responsible -

Ms OGILVIE - Yes, by which it is proved or not.

Ms LOVELL - Being mindful of time, I do not think we need further comment on the process surrounding the investigation. I understand that it is taking time and I understand the process.

My question was to you was, as minister for Workplace Safety, do you think somebody should be able to be licensed and continue to operate in a regulated environment when they are not meeting the requirements of state law and that is plain to see?

Ms OGILVIE - The law is very clear on this. WorkSafe -

Ms LOVELL - The licensing issue?

Ms OGILVIE - That is for the minister for Racing, unfortunately.

Ms LOVELL - So, you don't have a view on that as minister for Workplace Safety?

Ms OGILVIE - Not on the Racing minister's -

CHAIR - We'll go to Luke.

Mr EDMUNDS - My concern about this is everyone knows that this was updated in November. You all knew that this wasn't in place and we have plenty of sitting weeks of parliament where we could have done something about this. But, minister, is it really appropriate that it went on for - I think my numbers are right - 297 days? Ten months this outfit was able to operate without the appropriate cover. How is that appropriate and why didn't you do anything about it? I mean, if an investigation is taking too long, we have plenty of legislative options at our fingertips and the Government is more than willing to use them. Do you think it's appropriate that you've done nothing about it for nearly 300 days? It's a question for the minister and your opinion on that.

Ms OGILVIE - We've just heard from the Independent Regulator that in investigation -

PUBLIC

Mr EDMUNDS - Yes. Well, you're the minister.

CHAIR - The question is, I think, the investigation takes as long as the investigation takes -

Ms OGILVIE - That's right.

CHAIR - but it appears to be an urgent problem here that could perhaps be remedied in another way. Do you see there's another remedy?

Ms OGILVIE - The remedies that we have are those provided by law under the act. WorkSafe Tasmania has been working through the investigation. I am advised this is the case. As you are aware, I became the minister relatively recently. The penalties are very substantial. Breaches of the law are taken incredibly seriously. You need to be able to prove the case. My understanding is Robyn and her team have been working through that investigation diligently. That is the answer to it. Also, I must say we need to make sure that there is due process for everybody involved in this scenario.

CHAIR - We're sort of going over the same ground again. If I could just ask, do you have capacity as minister to advise the minister for Racing that this licence should possibly be suspended for the duration of the investigation, rather than allowing this person to continue to operate?

Ms OGILVIE - I think you're trying to identify a gap that there might be in ways to manage -

Mr EDMUNDS - Well, we've identified that basically everybody knew that this person didn't have cover and was prepared to let an investigation - that you all acknowledge - is taking too long take place and do nothing when you're actually the people in control of changing that. There could have been another incident in that period. So, if everyone knows something is a problem, why isn't anything done about it?

Ms OGILVIE - I have a power under the Workers Rehabilitation and Compensation Act to seek advice from the board of WorkSafe as to whether they think there should be policy reform in particular areas. This may be one of those areas that I could be advised on.

CHAIR - Do you have the power to take more urgent action where there is clearly an identified concern here? It carries a high penalty -

Ms OGILVIE - It does, absolutely. It's the law.

CHAIR - so there's a whole process, there's an investigation, there's a court case and we will have to follow that. Okay. So, in the interim, do you have the power -

Ms OGILVIE - That's right and it's under investigation currently.

CHAIR - Do you have the power to request that the licence be suspended until the matter is dealt with?

PUBLIC

Ms OGILVIE - I think in relation to anything to do with licensing, that is Tasracing. I'm not the minister for Tasracing and I do not dictate what Tasracing may or may not do. Robyn may be able to assist as to whether WorkSafe has any additional powers in relation to the specific question that haven't been deployed.

Ms PEARCE - Certainly, the other factor I think that it's worthwhile the committee being conscious of is the fact that there is an insurer of last resort built into the legislation, which is the nominal insurer, which ensures that workers are not disadvantaged should there be a situation where an employer does not hold a policy of insurance or the employer cannot be located, an employer is insolvent or the employer's insurance is insolvent or is unable to meet its liabilities under a policy.

So, it's never going to be a situation in Tasmania where a worker who is injured at work who claims workers compensation from their employer or their insurer - as in the first instance - that the employer is unable to make those payments. There is a mechanism through TASCAT where the worker can be referred to the nominal insurer, which is a statutory body, and that workers compensation claim will still be paid.

Mr EDMUNDS - Thank you. Minister, as you referred, there was a reshuffle this year but you were the minister for racing when the crash at Rowella happened on 30 January this year. We were talking in the previous hearing about an RTI that's come out about engagement between Mr Jenkins and Acting Inspector Greenwood, as well as an original email from Constable Hansen.

When you were the racing minister, did Tasracing make you or your office aware of the email it received from Constable Hansen, which apparently sought changes in workplace practices in order that the young driver of the vehicle not be charged with offences relating to the crash?

Ms OGILVIE - I don't believe so, but I would need to confirm.

Mr EDMUNDS - Would you be able to seek more information about that?

Ms OGILVIE - I can seek information about things that relate to my office, but not further into racing matters as -

Mr EDMUNDS - Do you recall, in either your capacity as racing or workplace minister, any conversations with Mr Jenkins regarding the police investigation, or, indeed, Acting Inspector Stuart Greenwood?

Ms OGILVIE - I'm actually not sure what you're referring to so my recollection is -

Mr EDMUNDS - We're referring to the email that has been widely covered in both your portfolios from the constable who highlighted some concerns around workers compensation policy, et cetera, and then in the email chain that comes back from Mr Jenkins, the CEO of Tasracing - you were the racing minister - where they effectively communicate with Acting Inspector Greenwood and the issue goes away. The final email is, 'All sorted, no action required'. I guess what I'm asking is -

Ms OGILVIE - I don't have a copy of that. Can I see it?

CHAIR - It was part of an RTI.

Ms OGILVIE - Right.

Mr EDMUNDS - There you go.

CHAIR - Was this during the period when the minister was the minister for racing?

Mr EDMUNDS - Yes, it was, but even if not, I think it's still relevant because of the workforce -

Ms OGILVIE - I'm not on the distribution list, I note. I am not sure what your question is -

Mr EDMUNDS - You're saying that as minister you were completely unaware of these conversations between Tasracing and other parties?

Ms OGILVIE - I am not saying that. If there were communications that are part of an RTI, I note that I'm not on the distribution list there -

Mr EDMUNDS - No, of course not. That's not what the question is-

Ms OGILVIE - Well I thought that was your question, whether I had it, which I didn't.

Mr EDMUNDS - Did you have any conversations with Mr Jenkins?

Ms OGILVIE - Conversations with Mr Jenkins regarding that particular email?

Mr EDMUNDS - Regarding the police investigation.

Ms OGILVIE - I think the answer to that is no.

Mr EDMUNDS - You had no conversations with Mr Jenkins about that?

Ms OGILVIE - No. My recollection is that the investigations that WorkSafe in particular are doing are managed by them separate to racing portfolios. Yes, there was a reshuffle. I'm not the minister for racing, I cannot comment on this. I note I'm not on the distribution list, but look, there's a lot of correspondence that happens, so I would -

Mr EDMUNDS - When you were the minister, you don't recall any conversations between you or your advisers with Mr Jenkins about the issue that they faced with Tasmania Police and the subsequent solution?

Ms OGILVIE - I do not recall having a conversation with Mr Jenkins about the content of that email, if that is your question.

Mr EDMUNDS - About the police investigations?

Ms OGILVIE - I don't recall that. Happy to check.

CHAIR - Well, it's not about the content of the email; it's just about the police investigation.

Ms OGILVIE - Seems to be quite a broad question.

Mr EDMUNDS - Well, because we want to know what conversations you might have had. The emails tell a story and certainly, the previous witness added to that picture as well and so we're interested in whether you had any conversation with Mr Jenkins about the challenges, you might put it, that he was facing with Tasmania Police.

Ms LOVELL - Can I go back a step? When you were minister for racing, were you aware of contact that the police had made with Tasracing, with Mr Jenkins, about policies, in particular fatigue management, about the crash at Rowella?

Ms OGILVIE - I don't think so.

Ms LOVELL - Did you have any conversations with Mr Jenkins, or anyone in your office have any conversations with Mr Jenkins about the contact he was having with police around that crash?

Ms OGILVIE - I can only speak for myself about what conversations I may or may not have had. I do not recall having a conversation with Mr Jenkins about police investigations in relation to that crash. Having said that, as minister, they are an independent organisation, they do do things. I note I am not on the distribution list of that email. I think that's all I can give you.

Ms LOVELL - Were you briefed on the circumstances of the crash at the time as minister for racing?

Ms OGILVIE - I'm sure I was. I can't recall exactly the breadth of a briefing though.

CHAIR - We are out of time.

Ms OGILVIE - Given it's a WorkSafe investigation too, obviously. It sits with the appropriate investigatory body.

CHAIR - Thank you minister and your team for appearing before the committee. We have a couple of matters that we'll write to you that probably need to be forwarded onto WorkSafe Tasmania. We appreciate Robyn appearing even though she's not 100 per cent. Thank you for your time today.

Ms OGILVIE - My pleasure.

The committee suspended at 11.50 a.m.

PUBLIC

The Committee resumed at 12.18 a.m.

CHAIR - Thank you, minister, for appearing at the Government Administration Committee A doing a short inquiry process into Tasracing. It's a little bit like a GBE. We are not going out to broad consultation or further inquiry, but hearing from the key ministers responsible for this matter and particular focus on the workers compensation issue. The report will basically be our hearings, the *Hansard*, any additional information provided plus the minutes of the meetings, just so you're aware of the process.

I will note that this is a public hearing. Everything that's said in the committee hearing is covered by parliamentary privilege, that may not extend outside the hearing. I will require members who are going to speak at the table, other than you, minister, who is already sworn, to make the statutory declaration before we commence. If there's anything of a confidential nature you wish to discuss with the committee you can make that request and the committee will consider that, otherwise it's all public.

Do you have any questions or comments before we start? I will get you to introduce yourself and then get your members, the team, and get them to do the statutory declaration, if you wouldn't mind.

Mr ELLIS - Sure, thank you, Chair. Felix Ellis, Minister for Racing. To my right, we've got Dave Manshanden, Chief Operating Officer of Tasracing; Daron Heald, Chief Financial Officer, Tasracing; my Chief of Staff, Elaina Deayton, who won't be taking questions today; and Jason Jacobi, Secretary of the Department of Natural Resources and Environment Tasmania.

Hon FELIX ELLIS MP, MINISTER FOR RACING, WAS CALLED AND WAS EXAMINED

Mr DAVE MANSHANDEN, CHIEF OPERATING OFFICER, and **Mr DARON HEALD**, CHIEF FINANCIAL OFFICER, TASRACING, WERE CALLED AND WERE EXAMINED.

CHAIR - Mr Jacobi has already done it earlier this morning, so he's fine. Did you want to make an opening statement, minister? Then we'll go to questions.

Mr ELLIS - Sure, thank you, Chair. The Rockliff Liberal Government is a proud supporter of Tasmania's racing community and the thousands of people who are a part of it. The Government recognises the extraordinary care and diligence with which many participants undertake their work in the industry and how close-knit the racing community is. Industry and participants have an important role to play in ensuring workplace safety, and that includes Tasracing. WorkSafe Tasmania is responsible for regulating the Workers Rehabilitation and Compensation Act and for ensuring compliance, including investigating alleged breaches of the act.

Tasracing has a key role in participant education and awareness of health and safety within racing. This short inquiry is in no small part informed and impacted by the devastating accident at Rowella earlier this year which resulted in injuries to five young participants and

the deaths of four horses. This accident is nothing short of tragic and my heart goes out to all those involved in the accident, their friends and their loved ones.

It's also imperative that I be absolutely clear that I won't be drawn to comment on matters that are before the Supreme Court.

On November 2022, I was asked by Mr Winter whether I would support the charges being dropped into this matter. I caution against commentary that may be perceived as an attempt to influence the outcome or interfere with a court process. The last thing that any of us want is for court proceedings to be impacted by political commentary. Inexperience is no excuse for this. We all have a standard to uphold as leaders within our community and parliamentarians.

Finally, I understand and appreciate that there will be interest in the final Murrihy Report from members opposite. I can confirm that the Government received the final report from Mr Murrihy on 29 November, and the Government will be releasing the report along with the response in coming weeks. The terms of reference of the Murrihy review are not explicitly relevant to today's inquiry. However, for clarity, I again confirm all matters outside of the terms of reference have been referred as appropriate to the relevant agency. That includes relating to the Workers Rehabilitation and Compensation Act 1998 to WorkSafe Tasmania.

CHAIR - With regard to the Murrihy Report and the response, will you be releasing the report in full?

Mr ELLIS - Yes. We're working through the process currently and doing our due diligence, but certainly our intention is to release the outcomes of the report and we will have more to say very shortly. So, as I say, we'll have more to say very shortly, but we're working through the process, including doing our due diligence on the report. Obviously, it's an investigation into serious allegations, so I'll be updating the community very shortly.

CHAIR - As you're probably aware, there have been differing views - if you like - on who's actually responsible for ensuring that participants in the racing industry have workers compensation insurance. We've heard from ORI earlier. We've heard from Workplace Safety earlier. It seems that there's not any clear person with responsibility to say you have to have workers compensation insurance other - which means comply with the law, without a licence being issued.

If someone didn't have workers compensation insurance, that would be a matter that the fit and proper person test would apply to. Can you tell us what your view is, minister, on whether you see a person without workers compensation insurance, an employer, should be issued with a licence to operate, to conduct their business, without workers compensation?

Mr ELLIS - Yes. I don't think that characterisation is quite accurate, Chair. I think WorkSafe made it very clear that WorkSafe is the regulator in this space and they have a strong role when it comes to ensuring that the act is complied with and that they investigate matters regarding people not having - businesses - not having workers compensation insurance. That is really important. They are the regulator that's responsible for regulating all -

CHAIR - They're not responsible for licensing, minister. I am coming to the -

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Mr ELLIS - Sure, if the question is around licensing, there are a range of different licences that you can have within the racing industry. Now, as part of that, we want all racing participants to comply with all laws in the State of Tasmania. That's absolutely important. There are discrepancies in terms of the licensing arrangements, in terms of the questions that are asked between the different codes. I think it's been outlined here and previously that for thoroughbreds there is an exclusive -

CHAIR - We've got that evidence. The question was around how is it possible that if someone can't prove that they have, or doesn't have workers compensation insurance, that they could continue to operate while being subject to an ongoing investigation and/or some other process without -

Ms LOVELL - Without a licence.

CHAIR - Yes, but their licence. What we heard from ORI, and I think the member for Rumney asked the question, if everything else was all fine in terms of their compliance with other requirements of their licence, but they didn't have workers compensation, that wouldn't trigger a suspension. That would trigger a fit and proper person assessment. Do you think that's appropriate? Or the licence should be suspended?

Mr ELLIS - That is triggers a fit and proper person process?

CHAIR - Yes, rather than a suspension of their licence.

Mr ELLIS - The fit and proper person process is a condition of the licence. Working through a process around whether someone is a fit and proper person to hold a licence is an appropriate process. Unless I am misunderstanding your question, Chair.

CHAIR - The question is, if someone can have, hold a licence - and in the harness sector, for example, they don't have to tick the box to say that they've got workers compensation - perhaps an oversight but probably will be remedied, but not till August next year - but they could operate without workers compensation insurance. If that was detected that they didn't have it prior to some incident occurring, the only process then that would trigger would be - not an automatic suspension of their licence until they did have it - it would be a fit and proper person test.

Mr ELLIS - So, you need to be a fit and proper person to hold a licence and so in determining that, the regulator goes through a process in terms of determining whether someone is a fit and proper person -

CHAIR - So, if they don't have workers compensation insurance, does that then not meet that fit and proper person test?

Mr ELLIS - That's a matter for the regulator, as far as the way they assess fit and proper persons.

CHAIR - Which regulator?

Mr ELLIS - Are we talking in terms of licensing?

CHAIR - Yes.

Mr ELLIS - Yes, in terms of ORI and their work around licensing, if that is your question, I am not sure if I am misunderstanding something there, Chair.

Ms LOVELL - Minister, we heard this morning that - and putting aside the discrepancies between the application process for thoroughbred licensing and harness licensing, because we know that there's a tick box in one and not in the other. Putting that aside, the condition or the requirement generally under the licensing is not necessarily to have workers compensation insurance, but it's to acknowledge that workers compensation insurance is required under state legislation.

My first question to you is, are you satisfied that that is enough of a requirement, a strong enough requirement - in terms of licensing for harness and thoroughbred racing - to not actually have the insurance and have to prove that you have the insurance but just to acknowledge that you know that it's required?

Mr ELLIS - In terms of the question around the discrepancy, because I think that is sort of at the heart of the matter, I was made aware that there's a discrepancy between the different codes with the way that they make requirements around licensing for workers compensation insurance and then sought further information around that discrepancy: why it exists and what further measures should be taken. Subsequently, the Office of Racing Integrity wrote to Tasracing regarding that discrepancy and -

Ms LOVELL - This is the tick box?

Mr ELLIS - Yes, as mentioned by you before, Ms Lovell, that in harness racing it's different from thoroughbred, and greyhounds is similar with harness racing. I was made aware of that discrepancy and subsequently ORI has written to Tasracing around that. I am aware that Tasracing is looking into that process and any further changes that might be made because safety absolutely needs to be at the core of everything that we do when it comes to racing. There are elements of racing that are very high risk -

Ms LOVELL - Can I stop you there because I don't agree the discrepancy is the heart of the issue. The discrepancy is really just a discrepancy in terms of how that requirement is acknowledged. The heart of the issue, in my view, is the requirement itself and the fact that the requirement is not for a licence holder to have insurance. It is just to acknowledge they're supposed to have it. Are you satisfied with that being the requirement of the licence? That they just acknowledge that they are meant to have it, whether they do that through a tick box or a signature on a form or however it is done, the requirement is the same for both codes.

Mr ELLIS - Everyone needs to comply with the law, that is an absolute bedrock principle when it comes to this matter. Where people are not complying with the law then there needs to be processes undertaken to remedy that and any appropriate sanctions as part of that process. Whether we're talking through workers compensation insurance requirements or any other matters when it comes to the laws of the state of Tasmania. We expect participants to comply.

In terms of the way that we ask those questions in questions and licensing forms, working around what more we can do in the future is important but where there are people that are not

complying with the law then there should be appropriate sanctions in that space. What I might do -

Ms LOVELL - On that, given that the sanction for not holding workers compensation, breach of the law there sits in the Workers Rehabilitation and Compensation Act, section 97. The process for that, as we're seeing play out now, is a very lengthy process, and there are no provisions under that act to do anything in terms of restricting the operations of somebody in a licensed environment until that person has been prosecuted. That's taking some time in the instance that's before us now, that's the 30 January, now here we are in December and that investigation is still under way. What that means is, that licence holder has been allowed to continue to operate for almost 300 days without workers compensation insurance, in a regulated licensed environment. As Minister for Racing, do think that's acceptable?

Mr ELLIS - I am not going to go into the specifics of a legal matter that's currently live.

Ms LOVELL - I am not asking you to do that. I am asking you, do you think it's acceptable that there are no provisions currently to restrict in any way the operations of somebody in a licensed environment when they're potentially in breach of this law?

Mr ELLIS - There are obviously fit and proper persons processes that apply to licences and I think that's already been outlined here around that. There are processes to go through with all legal matters and going through legal processes is important, as is complying with the law.

Ms LOVELL - One more question on this, on the fit and proper person, I think this is where we are leading to. Do you believe that somebody can be a fit and proper person in terms of holding a licence in this environment if they are in breach of a law, in this instance, being workers compensation insurance legislation? Everything else they're doing might be exemplary but they don't have workers compensation insurance and they knew they were meant to because they've acknowledged through the process. Do you think that person should be able to be still deemed a fit and proper person to hold that licence?

Mr ELLIS - We expect all people to comply with the law when it comes to their licensing requirements. The Independent Regulator then assesses whether someone is a fit and proper person as it applies, particularly given the nature of any severity of breach when it comes to rules in all those matters, that's important. It's important that independent regulators are enabled to do their job. What I might do is pass to the department secretary -

Ms LOVELL - I'm really interested in hearing you, as minister for Racing, whether you believe -

Mr ELLIS - I believe all people who are licensed should be fit and proper persons.

Ms LOVELL - And do you believe that someone can be a fit and proper person if they are in breach of the law by not having workers compensation insurance?

Mr ELLIS - As mentioned, we have an independent regulator in this space who determines who is a fit and proper person as part of that process. Our expectation is that people are fit and proper persons. The Independent Regulator will make that assessment based on severity of breach and other important matters and they will work through that, but what I might

do is pass to the secretary if he wants to update anything further in terms of the Independent Regulator space.

Mr JACOBI - Thank you, through you minister, in my personal opinion and in the community opinion, I think it would be fair to say that if a person isn't licensed or has deliberately avoided holding workers compensation, that that is not appropriate. That is not the behaviour of a fit and proper person. In saying that, though, every case that is brought to our attention has to afford the person natural justice. We have to make inquiries to determine that there aren't genuine or legitimate reasons why they haven't been able to obtain workers compensation and in a particular case of one trainer, that process is underway right now.

Ms LOVELL - Do you think it's appropriate, minister, that that person can continue to operate in that environment without the relevant insurance while that investigation is underway?

Mr ELLIS - There's an investigation under way, so I'm not going to comment further in terms of the matters that we're talking about in terms of that investigation, but as mentioned, we expect all people to be fit and proper persons. There's an independent regulator in that space and they make assessments around that and safety is absolutely our highest priority and it's important that all participants in racing treat safety the same. It absolutely needs to come first, and -

CHAIR - Can I just step back from this: how is it possible that we could get to a situation where a serious incident has to occur before it becomes apparent that people operating in this industry are not probably covered with workers compensation insurance, the employer doesn't have it? How is it possible we could get to that point if all these fit and proper person tests and everything are done when issuing a licence? How did we get there?

Mr ELLIS - I'm not going to go into the specifics of that legal matter.

CHAIR - I'm not asking you to. I'm talking about the system -

Mr ELLIS - I mean, you have asked me about a specific legal matter.

CHAIR - No. That was the point in - no, I didn't ask you about that. I said that was the point -

Mr ELLIS - You asked me about a serious incident.

CHAIR - No. I didn't ask you about that. Okay?

Mr ELLIS - Okay. Sure.

CHAIR - If you listen to the question, that was the point when it became apparent that this can occur. How could that occur with the processes in place, if people are being assessed when issued a licence as a fit and proper person? How could it occur that someone could do that and not have workers compensation insurance?

Mr ELLIS - As I mentioned, there is a discrepancy around the forms that are required in terms of licensing.

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CHAIR - No, it's not the forms. It's about how could that occur that whether the form is different or not -

Mr ELLIS - As in whether the regulator knew about the insurance, is that -

CHAIR - No. What is the gap here that means a licence can be issued, assuming the person is fit and proper to hold that licence, if they haven't met all their legal obligations?

Mr ELLIS - I mean, there's a range of legal obligations that are required of any -

CHAIR - This particular legal obligation, then.

Mr ELLIS - Sure. So, there's a range of different legal obligations that are required for all small businesses in a range of different areas. Whether we're talking specifically about a matter regarding workers compensation insurance, or whether we're talking about the broad gamut of requirements for small businesses, as far as whether the regulator knew that someone held workers compensation insurance or not, I think we've discussed that's quite specifically regarding the different ways that that evidence needed to be required or was not needed to be required under the existing licensing framework. We've identified that discrepancy, and we've -

CHAIR - What are you going to do about that?

Mr ELLIS - As I said previously, Chair, when it was brought to my attention we then followed up, sought further information and then ORI has written to Tasracing regarding the discrepancy and the provision of information -

CHAIR - But the discrepancy only relates to acknowledging that you know you have to have it. The missing thing here appears to be, and no one said any different, that you don't actually have to have workers compensation to acknowledge -

Mr ELLIS - Everyone has to have workers' compensation, Chair.

CHAIR - But this is not checked.

Mr ELLIS - So, when it comes to those who are required to have it, they must have it. Obviously, there are -

CHAIR - How is this checked? In the licensing process, how is it checked that someone actually has - doesn't only know they've got to have, but they actually have -

Mr ELLIS - Sure. So, in terms of the operational questions around how ORI assess that, I might pass to the secretary. Obviously, we've had the Director of Racing, the General Manager of ORI here at the table, so perhaps it might have been a question for him but I'll see if the secretary is aware of the operational side.

Mr JACOBI - Thank you. Through you, minister, all I can add is the evidence that Mr Helmich provided this morning, which was that as soon as he became aware of the absence

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of workers compensation, he referred it to a number of different parties for further investigation.

Ms LOVELL - Can I ask a follow-up on that? Mr Helmich told us in the hearing this morning that ORI became aware that Mr Yole - sorry, I'll go back because that evidence was - when did Tasracing become aware that Yole Racing did not have workers compensation insurance?

Mr MANSHANDEN - Tasracing became aware from the TASCAT findings and that was followed up with a subsequent conversation from Tasracing with Mr Yole that he currently didn't have workers compensation and that was around 23 November.

Ms LOVELL - WorkSafe Tasmania has told us in their hearing that they became aware that there was no workers compensation insurance on 30 January.

Mr MANSHANDEN - To my knowledge, Tasracing wasn't provided that advice. The first Tasracing - in my understanding - it was through the TASCAT findings and in a subsequent phone call to Mr Yole to confirm whether he had workers compensation insurance or not and that was on 23 November.

Ms LOVELL - WorkSafe Tasmania was aware from 30 January, but there was no notification made to either ORI or Tasracing until that -

Mr MANSHANDEN - If it came through Tasracing, we're not aware that that information had come through to Tasracing from WorkSafe.

Ms LOVELL - Are you aware - and minister, I accept that you weren't the minister for racing at the time, so you might need to direct this question to people at the table who were around at the time - are you aware whether the minister for Racing - at the time on 30 January after that crash happened - was the minister for Racing made aware that there was no workers compensation?

Mr ELLIS - I'm pretty sure that you had the previous minister for Racing at the table about an hour ago.

CHAIR - She wouldn't speak about her time as minister for Racing. That's over to you.

Ms LOVELL - So, she's proffered us to the Minister for Racing.

CHAIR - She handballed it straight to you and to your team here.

Mr ELLIS - Look, in terms of what the department may have received at the time, we might look to the secretary if there is any information that we have to hand.

Mr JACOBI - Thank you. Through you, minister, no. We've got no other information that was referred to us other than Mr Helmich's evidence this morning that he received advice in mid to late November.

Mr EDMUNDS - I had a question for Mr Jenkins, who's obviously not here. So, with regards to Tasracing though, so we'll do our best. Did Tasracing make minister Ogilvie's office aware of the email it received from Constable Hanson on 14 February?

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CHAIR - With regard to the crash, to be more specific.

Mr EDMUNDS - Yes, with regard to the crash and some policy concerns.

Mr MANSHANDEN - I'm unaware of that information. I would need to take that on notice if I can.

Mr EDMUNDS - If I could perhaps - a few people have changed roles, not only with the minister but also yourself, Mr Manshanden, and you were a previous adviser to minister Ogilvie and minister Howlett. In that capacity, are you aware of any correspondence from Tasracing alerting the concerns raised by the constable in February?

Mr MANSHANDEN - Look, I can't recall, Mr Edmunds. I'll have to take that on notice. It's going back a few months now.

Mr EDMUNDS - It is. It's just that the RTI that was released has you as a cc on that email from Mr Jenkins to a Nicholas Walker and to yourself. So, that would be in capacity as a ministerial adviser in and not as a Tasracing - yes.

Mr MANSHANDEN - Well, that would be correct. If Mr Jenkins has forwarded an email as an FYI, that would be notification to the minister's office. I'd have to go through my notes and just follow up what that email was specifically asking.

Mr EDMUNDS - In terms of the minister at the time, are you aware of what her response was when she became aware of that information?

Mr MANSHANDEN - It was going back to that serious accident and the minister, I think, reached out to a number of participants at the time. Directly to Mr Jenkins' email, I can't recall if there was any response from the minister's office in regards to Mr Jenkins' email. I'd have to go through those notes.

CHAIR - Are you happy to do that and provide that to the committee?

Mr MANSHANDEN - I don't have access to my DPAC email anymore, so that may be something that I'd need to take on notice through the department. That was stopped in May this year.

CHAIR - We will write to you about that.

Mr EDMUNDS - Well, who answers that question? Yes. I'm not sure. It's probably not me. Is that okay, that it's taken on notice?

CHAIR - Yes.

Mr EDMUNDS - That is fine with me, I am not the decision maker.

In terms of that contact, Mr Helmich this morning spoke about the fact that he had been in touch with Tasracing as well as Inspector Greenwood. Do you recall any conversations with the minister's office and Mr Helmich or either of those other parties about this?

Mr MANSHANDEN - Not in particular to reaching out to Inspector Greenwood, no, but I am aware that Mr Jenkins and Mr Helmich did have a conversation in regards to the email from the attending constable. Mr Jenkins, using Mr Helmich's previous career as a police officer, got a contact of the inspector and just wanted to validate the information that was in that email. Subsequently to that, Mr Greenwood responded to Mr Jenkins, said that the matter had been referred to the special crash unit, which I think is the appropriate police protocol in a serious incident of this nature.

Mr EDMUNDS - You talked about the DPAC email. Did you have a DPAC and a Tasracing email at the same time?

MR MANSHANDEN - Depends when you are referring to the date of this email. So I finished at Premier and Cabinet in May and had no access to that email since that time.

CHAIR - In terms of policy, you're called here and you have outlined - and I think we all agree - that having all legislative requirements met is important but it seems to me that there's - I haven't heard across the table yet - there is a provision that any power from either yourself as Racing minister, ORI as the regulator, Minister for Workplace Safety to suspend a licence whilst an investigation is going on. Am I incorrect in that or is there a power who has it?

Mr ELLIS - In terms of suspending licences, the Office of Racing Integrity is the regulator in that space. In terms of enforcing compliance with workers compensation insurance requirements, more generally under the law, that sits with WorkSafe. In terms of licensing, ORI is the independent regulator that has the powers regarding suspending the licences. There is a range of matters that are under way and ongoing and those will be worked through in the appropriate way.

CHAIR - From your perspective though, minister, if you look in health, for example, if a medical practitioner breached the law, you would expect their practising licence to be suspended while an investigation went on if it was of a serious nature. Breaching workplace health and safety act, workplace rehabilitation - I forgot the right name of it, anyway, you know the one I mean, the WRC, Workers Rehabilitation and Compensation Act - if that breach is serious and they do not have it, in which case significant penalties, would you expect that there would be a suspension until the licence, that the operating licence if you like, until such time as that it could be confirmed that the person was fully compliant with the conditions of their licence?

Mr ELLIS - Yes, my understanding is that Tasracing has received further information regarding the workers compensation insurance requirements for the individual business you are talking about. Would you like us to provide further updates?

Mr MANSHANDEN - In regards to Mr Yole?

Mr ELLIS - Yes.

Mr MANSHANDEN - We can confirm that Mr Yole currently has, through a labour-hire company, a workers compensation policy in place for his employees. We went through a process with Mr Yole and the labour hire company and they were able to satisfy

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Tasracing and the Director of Racing that there was an arrangement that Mr Yole had in place with the labour hire company covered those employees under Workers Rehabilitation and Compensation Act.

CHAIR - When was that?

Mr MANSHANDEN - That was on, if I could just check my notes. Pretty sure it was Friday 24 November.

If I can give you a little bit of context, the Tasracing board wrote to Mr Yole, concerned that he may not have workers compensation in place, and, as I outlined, that was from the direct conversation that I had with Mr Yole. The Tasracing board then had an emergency board meeting and determined that unless Mr Yole can satisfy the board that he had appropriate workers compensation insurance in place, that he would be restricted access to Tasracing venues. After direct discussions with Mr Yole and the labour hire company, they were able to satisfy Tasracing and the director that an appropriate level of cover was in place for their employees.

CHAIR - In making that assessment, did you look at provisions of that insurance?

Mr MANSHANDEN - Yes, a certificate of currency was provided. We went back and asked for an extension to that to have horse-related activities provided to that certificate of currency, which the labour hire was able to satisfy the board that they had adequate insurance in place.

Ms LOVELL - When did the board write to Mr Yole? What date?

Mr MANSHANDEN - Thursday, 23 November.

Ms LOVELL - When was the emergency board meeting? Was that that same day?

Mr MANSHANDEN - Same day.

Ms LOVELL - To clarify, that was because Tasracing had become aware that Mr Yole may not have workers compensation insurance because of the reporting of the TASCAT decision. What date was that again?

Mr MANSHANDEN - I'd have to go through my notes, but we became aware of the TASCAT findings as they were publicly released. There's another part of that. The Director of Racing then wrote to Tasracing and said he had no capability: the workers compensation lay outside of his scope as the Director of Racing and the Office of Racing Integrity. Tasracing wasn't satisfied to allow Mr Yole onto the property without appropriate workers compensation in place, so acted and wrote to Mr Yole.

Ms LOVELL - So that -

Mr MANSHANDEN - The notification from the Director of Racing was Tuesday 21 November.

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Ms LOVELL - Yes, I'm just trying to clarify when that TASCAT decision became public, but we can come back to that. You are saying that Tasracing became aware that Yole did not have workers compensation insurance was when that TASCAT decision was handed down?

Mr MANSHANDEN - There is some other information that Tasracing would like to put in camera and make that request around some other correspondence that we have received, which could form part of an ongoing investigation with WorkSafe.

CHAIR - We'll come to that a bit later. We'll do that at the end so we have all the public evidence together. It's tidier that way.

Mr EDMUNDS - I just got a follow-up one from the comments earlier about the conversations between, I think it was Mr Helmich and Mr Jenkins, around the police contacts and obviously, you were aware of that as an adviser. I'm wondering how that was communicated to the minister that that was occurring?

Mr MANSHANDEN - I couldn't recall. I would have to - in that role, Mr Edmunds, as you'd understand, you'd get multiple emails per day as an FYI and if that's the case, it was obviously Mr Jenkins just advising Tasracing of the status of that incident, which is appropriate in -

Mr EDMUNDS - Back to the further comments where you referred to the fact that they used previous contacts to facilitate that conversation. I'm wondering how that was communicated to the minister and what their response may have been, because obviously if their office was aware of it -

Mr MANSHANDEN - I can't directly recall if that was a conversation directly to the minister, I'm not aware of it, but I cannot directly recall a conversation in regards to Tasracing reaching out to Tasmania Police.

Mr EDMUNDS - Okay.

Ms LOVELL - I've just had a look at what I can find online as we sit here and I can see that the TASCAT decision was reported in *The Examiner* newspaper, I'm not sure when the decision itself was handed down, but there was a report on 12 November 2023. So Tasracing presumably would've been aware from 12 November, if not earlier, and yet there wasn't an emergency board meeting or any correspondence to Mr Yole until 23 November.

Mr MANSHANDEN - That is correct, after we received the advice from the Director of Racing that the requirements ensuring compliance under the workers compensation act didn't sit with the director of racing.

Ms LOVELL - What happened in between those? Could you talk me through what happened in between Tasracing becoming aware that there was no insurance and that emergency board meeting?

Mr MANSHANDEN - We were of the understanding that hopefully the Office of Racing Integrity, having that information, would be considering any possible breaches under the rules or state law. It wasn't until we received that correspondence on the 21st, once we

received that correspondence we were not satisfied that Mr Yole had appropriate cover in place and the board enacted an emergency board meeting.

Ms LOVELL - What was the content of the correspondence you received on the 21st?

Mr MANSHANDEN - It was a letter from the Director of Racing to Andrew Jenkins in regards to a range of matters. One of those was section 97 of the workers compensation act where the Director of Racing made it clear in that letter that compliance under the workers compensation act sits outside the Office of Racing Integrity.

Ms LOVELL - Even though it was a breach, potentially, of the licence conditions? Well, that is the question, isn't it?

Mr MANSHANDEN - That is a question for ORI and WorkSafe.

CHAIR - To be clear, TASCAT reported on 30 October. On their website it says that.

Ms LOVELL - To go back, there is an email between - I understand - Catherine Yole and Tasracing from April, raising the issue of workers compensation.

Mr MANSHANDEN - Chair, I think we need to be careful around some dates here but I am happy to answer these questions the best I can, noting there are some other emails that we are aware of earlier this year.

CHAIR - We will see how we go. If it gets to the point where we need to go in camera to discuss this more fully, I have suggested in previous hearings if we do go in camera and there are matters that can be made public at a later time, we would seek your support to do that.

Mr MANSHANDEN - Sure, okay.

Ms LOVELL - I will put the questions and if you feel you cannot answer them we can deal with that. My question is, there is an email exchange here between Tasracing and Catherine Yole around workers compensation, but there was nothing at that stage to suggest that there might not be insurance in place. Were questions not asked about that?

Mr MANSHANDEN - My understanding is it was seeking a subsidy in regards to a workers compensation policy. Whether Mr Yole had workers compensation at that time, we were unaware of. It was simply a request for a subsidy payment to Tasracing.

Ms LOVELL - Did anybody ask him at that point?

Mr MANSHANDEN - I wasn't at Tasracing at that time. We could take that on notice if you would like.

CHAIR - Can you reiterate the request for the matters you want to take in camera, minister, or the Tasracing people.

Mr MANSHANDEN - Ms Lovell has shared the date there. There are a couple of others where there was some email correspondence that was in the RTI. If that is public knowledge, we can speak about those matters.

Ms LOVELL - My question now is, which emails are you referring to?

Mr MANSHANDEN - There was an email from Yole Racing in March providing a workers compensation premium, which is a certificate of currency. They were asking for some assistance from Tasracing with a subsidy payment.

CHAIR - We understand, from another hearing, I can't remember who was it that said Tasracing has provided some financial support to various players in the industry.

Mr MANSHANDEN - For the past three years Tasracing has provided a subsidy for thoroughbred trainers. There was a representation from a number of trainers three years ago about the rising costs of workers compensation insurance. Tasracing was able to assist those trainers at the time due to good trading conditions due to COVID-19. The subsequent two years it has been out of cash reserves. Tasracing, working with industry and the board, now has a contribution coming out of stakes money to help thoroughbred trainers with their ongoing workers compensation costs.

CHAIR - So, Tasracing is no longer directly subsidising it? Is that what you are saying?

Mr MANSHANDEN - Yes, previously it was coming out of cash reserves, FY23. We're now coming out of the thoroughbred code funding. It's a deduction from prize money.

CHAIR - Is that a particular owner-operator or business - applies to Tasracing - not all do, just some do?

Mr MANSHANDEN - Not all do, so they have to provide a copy of their certificate of currency and what they've paid and then we total those premiums up and provide the pool of money and divide it equally between the trainers, dependent on what their final amount is.

CHAIR - In that process, do you assess the fact that they've obviously got workers compensation insurance and you've seen their premiums?

Mr MANSHANDEN - That's correct.

CHAIR - In that process, was it apparent that there were some who perhaps hadn't sought a subsidy?

Mr MANSHANDEN - The 30 to 35 trainers who provided workers compensation - we were understanding of their business model and they employed a fulltime concern.

This is where it gets complex in all the three codes. There are a number of trainers who would think that they don't need it because they're a sole trader and, under the act, the jockeys and apprentices are covered under the Tasracing policy. In that relationship, some of those trainers don't require workers compensation because they're working as a sole trader and then using Tasracing jockeys under the act to ride all their work, so it's a very -

CHAIR - What about other people who work for them, though, or they don't have people work for them, it's just them and the jockeys?

Mr MANSHANDEN - Yes, that's correct.

CHAIR - That's a small operation.

Mr EDMUNDS - Inherent in this correspondence is a pretty big red flag that they don't or didn't have that cover and it was a question put to the minister before who flicked it forward to this afternoon. If there was such a widely known gap in their insurance, why has an investigation been able to drag on for so long when there are potentially other mechanisms that could have been used to tighten this loophole or sort that out - whether it's through parliament or whatever? We all know about it; it's here in black and white - correspondence to the relevant authorities. I know that the answer we got before was, 'The investigation is ongoing,' but why do we have to wait for that when it has been clearly identified that there's a gap?

Mr ELLIS - Why do we have to wait for an investigation into a legal matter?

Mr EDMUNDS - If everybody knew - it's there in black and white that this operation didn't have cover - why did we have to wait until November to find that out?

Mr ELLIS - Sorry, Mr Edmunds, what are you asking me exactly?

Ms LOVELL - Minister, we were told before that Tasracing first became aware that there was no workers compensation insurance in place after the TASCAT decision was handed down in November. Yet, there's an email exchange here from March and April which makes it pretty clear that there wasn't workers compensation insurance in place, or at least it suggests that there -

Mr MANSHANDEN - They were asking for a subsidy. We don't have that information - whether they had a workers compensation policy in place or they were sourcing it.

Ms LOVELL - And no questions were asked at that time when this -

Mr MANSHANDEN - I wasn't at Tasracing at the time. I'd have to take that on notice.

Ms LOVELL - Okay, you've said that already.

As part of this email exchange there was an email from Mr Jenkins that stated that workers compensation cover is an issue across both equine codes of racing for trainers. Tasracing has commissioned an external specialist to provide us with a report and a list of options to consider and we expect to have that available around July. What was the outcome of that report and are you able to share that with the committee?

Mr HEALD - We've engaged Gow-Gates Insurance Brokers to investigate the opportunities within the whole workers compensation area for the racing industry in Tasmania. They have put in a lot of effort accumulating data, talking to insurers, looking at options. That investigation is still ongoing and the review is still ongoing.

It's a very difficult one. There's a very limited number of interested parties to deal with large animal activities, particularly in Tasmania, or anywhere else in Australia, to be honest. A lot of insurers are looking to reduce their risk profiles at the moment so it's difficult to get a

lot of insurers to pay a lot of attention. However, Gow-Gates is undertaking the process and they are talking with all the insurers and seeing what options are available. Once we have some options we will come back and put that towards the industry.

Ms LOVELL - That was expected in July and it's December and still nothing. Do you know when you're expecting to have that report?

Mr HEALD - We're in touch with them constantly in terms of their discussions with insurers and what data they need and how they're getting the data. We would probably expect it to still be another three or four months.

Ms LOVELL - Given that this has obviously been an issue that Tasracing has been aware of for some time - the question of workers compensation insurance - has there been any work done to audit trainers or audit anyone who should have workers compensation insurance to ensure that they do?

Mr HEALD - Our concerns for the insurance is the level of increases that our participants have been seeing and some of them have difficulty in actually getting it. That's where our subsidy program came in place for the thoroughbred and we've had that place as we've been going down this path and looking at what other options are available to assist with non-participants.

Ms LOVELL - Has there been any work done within the harness code to check with those who should have insurance to make sure that they do?

Mr HEALD - We've been looking at the costs and impost to our participants and how hard it has been to continue their operations with these massive bills which have been coming through for workers compensation. That is our other option.

CHAIR - I'm conscious of the time. We do need to wrap this up. You said there were 34 who applied for a subsidy. How many employers in their sector would have employees who would require - they're not using Tasracing, they're using workers compensation insurance through their own means. You have 34 who have applied, so how many are there all up?

Mr MANSHANDEN - There's about 90 thoroughbred trainers, so we're getting around 30 to 35, and they would be running those full-time operations. The others are where the complexity of workers compensation comes around, including jockeys being in the workers compensation act -

CHAIR - The question was - put those ones aside, the sole traders aside that don't have any employees other than the jockeys who are covered under Tasracing's measures - how many are there that don't fit that, not sole trader? How many are there that actually do employ people, stablehands and people like that in their operation?

Mr MANSHANDEN - We know there's 35 who have workers compensation. We're not sure of the business arrangement for these other trainers, whether they're employing staff -

CHAIR - Isn't it important to check this then, or is that not your job?

PUBLIC

Mr MANSHANDEN - Under the Racing Regulation Act, we undertake the licensing requirements; the regulatory function of compliance sits outside of Tasracing under the current act.

Mr ELLIS - I think WorkSafe spoke about this at this committee around doing some further work in terms of enforcement in the racing industry in the first half for 2024 -

CHAIR - They are. I'm interested in whether Tasracing knows how many there are.

Mr ELLIS - Yes, obviously WorkSafe is the regulator in that space, but also Tasracing has mentioned there's opportunities for Tasracing in terms of broader educative work and facilitating a greater awareness and understanding within participants of the industry who often are operating small businesses around their requirements. There's two sides of how we best address this issue which is something I think everyone in the industry, whether they're business owners, participants, regulators, others want to see, which is broad coverage and everyone complying with the rules.

That's enforcement if people are doing the wrong thing, and education. Some people may not even be aware. It may be that there's a change of business circumstances, which does happen, particularly small businesses, so that we bring people on the journey. A lot of regulators would acknowledge the importance of education as well as enforcement and compliance so that we get the best outcome for everybody. Genuinely speaking, everyone within the industry and responsible for regulating it wants to make sure that safety is the number one priority for everyone.

If there are changes that need to happen in terms of the rules of racing, the licensing requirements and others, so that we can set the best possible standard and give the public confidence in the safety that happens in racing, then that's something that I think there's really strong, broad agreement on from everybody.

Mr EDMUNDS - We've spoken today about the conversations between Tasmania Police, Tasracing and with ORI's involvement as well. Were you made aware of that when you were minister for police or is that something that was perhaps in the incoming brief as the minister for Racing?

Mr ELLIS - Yes, I was still minister for police. I sought a briefing from police following the release of the RTI.

If I can step through some of the matters for the committee's benefit and for the public as well. It's been mentioned around the crash now; our hearts are with the families and loved ones in that space. It was just a devastating incident.

The crash was attended by uniformed police including Constable Andrew Hansen from north-east division specialist crash investigators. You will hear me say CIS subsequently attended the scene to conduct a scene survey, with injuries to at least one person suspected to be serious. Initially, the crash investigations remained with Constable Hansen, awaiting confirmation of the seriousness of the injuries, and then the appropriateness of transfer to CIS under northern district support services. We then had the matter around email correspondence, which has been widely canvassed.

On 15 February 2023, Mr Jenkins from Tasracing proactively identified and made phone contact with Acting Inspector Stuart Greenwood from northern district support services, which incorporates Crash Investigation Services. He followed up with an email attaching the original correspondence from Constable Andrew Hansen. Acting Inspector Greenwood was now able to confirm the injuries to one of the people in the vehicle were serious and made the decision to move the investigation to Crash Investigation Services, which is under his direct line of reporting.

This is where it's important as far as understanding the transfer. It's common practice for a crash to be allocated to a general duties uniformed officer and as the complexity or seriousness of an investigation becomes known, it be transferred to a specialist crash investigator. The Tasmania Police manual states at 1.37.11 that CIS investigate

... (b) all 'serious traffic crashes' where there appears to be serious negligence, dangerous driving, grievous bodily harm, or a serious breach of the traffic or criminal law as determined by an inspector; and

(c) such other traffic crashes, including police vehicle crashes, that a divisional inspector or duty inspector determines that CIS should attend and investigate.

I hope that might clear things up for the committee around that process.

Mr EDMUNDS - When you were briefed about the contact between Tasmania Police and Tasracing -

Mr ELLIS - Yes. As I mentioned at the start, I sought the briefing following the release of the RTI and the scrutiny hearing that we held in this space to get a better understanding and then been provided that information which I'm happy to share with the committee as we just have.

Ms LOVELL - Was that the first time you were aware of that correspondence between Tasracing and Tasmania Police?

Mr ELLIS - The first time, me personally, yes.

Ms LOVELL - Can I ask, you said Mr Jenkins proactively contacted Inspector Greenwood?

Mr ELLIS - That is the advice I have on 15 February 2023.

Ms LOVELL - Why did he contact Inspector Greenwood? What prompted that?

Mr ELLIS - That's a matter for Mr Jenkins as to why. As I said, I've been briefed as far as the contact and I've updated the committee as to why a crash might move from initially being appointed to a general duties police officer to the specialist crash investigator.

Ms LOVELL - Do you know any more about the content of that conversation between Mr Jenkins and Inspector Greenwood?

PUBLIC

Mr ELLIS - Look, not as far as the phone contact, no. I'm aware that as part of the RTI there is email correspondence which has been widely canvassed in this committee, but in terms of a phone conversation, I'm not aware.

CHAIR - I'll wrap this up. I just want to say that Mr Jenkins not being here and unable to speak for himself, we will write to the minister in terms of asking Mr Jenkins about those matters and following up some questions around that.

Mr ELLIS - Of course. I'm not sure what the process is, Chair, whether you write to me or Mr Jenkins directly but -

CHAIR - I write to you as the minister and you can pass it onto whoever needs to answer the question, because some of them may not be your questions to answer.

Mr ELLIS - Sure.

CHAIR - Thanks everyone. Appreciate your time today and we will stop the broadcast.

The committee adjourned at 1.14 p.m.