

#### SISA Update December 2015

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### WHS

- Few developments to speak of
- SWSA middle management still being appointed & structure resolved
- Chief Inspector appointed ex Cobham Aviation
- PCBUs in SA have until 30/12/16 to comply with the Globally Harmonised System of Classification and Labelling of Chemicals (GHS)
- WHS Regulation 736 sets out transitional arrangements for GHS



### **Return to Work Act 2014**

- First s.18(3) trial under way in SAET Walmsley
- RTWSA has intervened
- Constitutional argument being made
  - Does SAET's power to order employment collide with Federal IR powers?
- Also arguing that s.18 is too vague and incapable of clear interpretation
- SISA is part-funding SC opinion in a second case if Walmsley doesn't yield enough clarity

### **Return to Work Act 2014**

- What else we need to know about s.18:
  - Will SAET consider a paid resignation a constructive dismissal and allow s.18(3) applications to proceed?
  - Is *Longyear* still relevant?
  - Is resignation the only protection?
- Some concerns emerging about WPI assessors
- RTWSA is observing some assessments noncompliant
- May be a test case soon re complying
  assessments and choice of assessor

### A new twist...

- Worker negotiating medical and income redemption with a SI
- Solicitor advice as required by ss.53(4) & 54(6)
- Billed \$1,800 ie 2 X maximum fee of \$900
- At Supreme Court rate, that adds up to 6 hours!
- Hardly likely! This is a try-on
- The \$900 is a *maximum*, not a fixed fee ss.53(4)
  & 54(6) presume justifiable billing practices
- Worth challenging if this happens to you



# Latest SAET decision handed down 27/11/15

- Watson v The State of SA [2015] SAET4
- Worker obtained WPI assessment just before RTWA commenced - came in at 27%
- Worker did not use report after Act commenced but claimed cost
- Cost rejected as not reasonably incurred
- SAET held:
  - Assessment is a medical cost under s.33
  - Cost was reasonably incurred



## **Legislative Developments**

- Work Health and Safety (Industrial Manslaughter) Amendment Bill remains in the Upper House
- Police (Return to Work) Amendment Bill 2015
  - Passed Upper House with support from
    Opposition SISA has protested in writing
  - Won't pass Lower House if Govt maintains its stance (on Notice Paper for 2<sup>nd</sup> reading 3/12/15)
- Predictable domino effect cross benches in LC drafting Bills for RTW Act amendments

# **Changes to SAET**

- Govt has announced plans to shift a number of new roles into the SAET
- Many are public sector, education & police functions currently with IRC & other bodies
- Some from WHS Act
- Only one from RTW Act s.188 hearing loss recoveries
- Likely to be carried out in 1<sup>st</sup> half of CY2016



# **RTWSA & self-insurance**

- Many rumours flying about increases in minimum guarantee
- Is one of a range of issues under consideration
- SISA has advised RTWSA that any substantial increase will be vigorously opposed – the Fund is already over-protected
- Release of discussion paper has been delayed until the new year
- RTWSA has done a poor job of maintaining confidentiality!

## **RTWSA & self-insurance**

- Still efforts on foot to get businesses to stay with or return to premium-paying scheme
- No known success so far
- More applications for SI in the pipeline
- First 5-year renewals have been made
- S.18 & evaluation:
  - Offering suitable employment is a matter for SAET
  - Members should not passively accept any adverse evaluator commentary re s.18 performance



# ATO – taxability of IM redemption

- Suggests that IM redemption that is:
  - Not part of ETP is taxable at worker's full rate
  - Part of ETP is taxable under the ETP formula
- For medicals is capital but not subject to CGT
- No further news
- Plan B a workaround?
  - Stop redeeming and use economic loss lump sums instead
  - Not illegal to pay more than the WPI assessment entitlement
  - Not advisable to use medical redemption as workaround



### **Other news**

- Rumours abound re future of PS claims management
- To be clear SISA has not been consulted, has no first-hand information, and no opinion
- Observation full outsourcing of functions would require legislative change to allow for delegation of powers to a 3<sup>rd</sup> party
- Other models exist for study eg NSW TMF





- New IRCC being formed. SISA has made nominations
- Replaces SWSAAC and IRAC
- Concerns over WHS and IR being in the same body
- WHS Review Committee membership being renewed. SISA has made nominations
- But likely those functions will be moved into IRCC in 2016



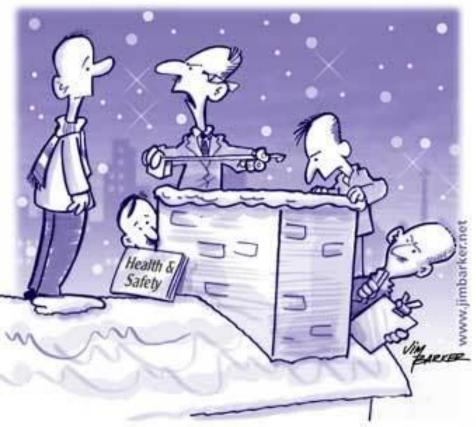
- New office-bearers:
  - Chair Matt Mann (Viterra)
  - Deputy Chair Ian Hutchison (Holden)
  - Treasurer Rachel Webber (Boral)
- Xmas drinks tonight! 4pm Crowne Plaza
- In planning for 2016 awards and CTL



 Website – expanded FAQs. Please provide issues that may generate new questions



### **Questions?**



WELL, IF YOU WANT SANTA TO VISIT, YOU'LL HAVE TO WIDEN THE CHIMNEY BY 12.4 CENTIMETRES, INSTALL NON-SLIP ROOF TILES, BUILD A LANDING PLATFORM AND PROVIDE ORGANIC FOOD AND TOILET FACILITIES FOR HIS REINDEER...



SISA wishes all members, friends & families a safe, happy SISA Christmas