



# 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 non-compliant
- 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

# Other news

- 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

# SISA news

- 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 Christmas &