



# SISA Update October 2016

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# Proposed changes to Code

- No sign yet of draft regulation to lift minimum guarantee to \$1.1 million effective 1/1/18 & reduce scaling factor to 150%
- Current consultation re SI application process:
  - Shorten and simplify process
  - Phased approach – EOI followed by application
  - Elements of self-assessment under standards
  - Possible recognition of JAS-ANZ certification?
  - SISA view – guarded support pending more detail

# Interesting developments in NSW

- PwC report
- 16 recommendations
- 3-tiered performance model (Shades of NCM?)
- New max term of 8 years
- IM self-auditing
- Cease WHS auditing
- SIRA to implement all 16 recommendations



# Bills currently on the table

- *Return to Work (Weekly Payments Under Transitional Provisions) Amendment Bill 2016*
  - Intended to undo *Pennington* but goes much further
  - If passed, likely to allow many workers with closed period claims under WRCA to claim a further 2 years of weekly benefits
  - Was not brought to a vote in the House
  - Word is that the MIR is discussing admin solutions with Darley

# Bills currently on the table

- *Statutes Amendment (South Australian Employment Tribunal) Bill 2016*
- Tabled and read a second time on 4/8/16
- Passed in the House of Assembly; now for debate in the Legislative Council
- Some industry associations still unhappy with some elements of it

# Bills currently on the table

- *Work Health & Safety (Industrial Manslaughter) Amendment Bill 2015*
- No information as to when the Parliamentary Standing Committee will report
- Government & Opposition likely to oppose the Bill
- Unlikely to progress beyond 2<sup>nd</sup> reading

# ATO policy on redemption

- Still does not appear to have been made final based on ATO website
- Consultation period closed
- It seems inevitable that income redemption will be held to be assessable
- Members are advised to seek legal advice on work-arounds
- Much depends on whether a redemption is part of an ETP – different tax rules

# Review of certain aspects of the RTWA

- SISA submission sent and is on website
- Strong emphasis on health benefits of work and adverse impact of long-term benefits
- So far 7 submissions from injured workers
- Only 2 employer submissions published so far
  - SISA and one premium-paying employer
- Some others have received extensions of time
- SISA will appear before the SC if invited



# SAET decisions

- Areas of growing interest:
  - **Transitional issues** (eg *Pennington v Return to Work SA* [2016] SAET 21 ; *Watkins v Return to Work SA (Allied Mills Pty Ltd)* [2016] SAET 38
  - **WPI assessments** (eg *Denton v Return to Work SA (Narooma Nursing Home)* [2016] SAET 57
  - **Combination of assessments** eg *Martin v Return to Work SA (Stratco Pty Ltd)* [2016] SAET 39
  - **Pre-approval of medical costs** eg *Camac v Coles Group Limited* [2016] SAET 49

# SAET decisions

- Decisions are now flowing at a brisk rate
- Still a lot of repealed Act cases
- Many RTWA decisions are going on appeal so not a lot of precedent as yet
- Still relatively few section 18(3) matters
- Pre-approval matters growing in number – most dependent on their own facts
- Transitional matters should taper off in 2017; s.18 matters may increase as IM ceases

# Reflections on RTWA state of play

- 2017 may well see:
  - Increased incidence of EL lump sum determinations
  - Increased numbers of s.18(3) applications as IM entitlement ends
  - Decreasing requests for pre-approval of surgery
  - Decreased transitional disputes
  - Increasing efforts to establish existing injury/fresh trauma claims under RTWA
  - Continued disputation of WPI around 30% threshold

# Reflections on RTWA state of play

- My major doubts lie in WPI
- Unconvinced that Guidelines Part 17 are sustainable
- Plenty of manoeuvring around choice of provider
- The problem child is serious injury/30% WPI
- Was using 30% WPI to label a person seriously injured and eligible for ongoing IM a major mistake?
- In many cases, 30% WPI confers plenty of work capacity
- In others, <30% WPI can be seriously disabling
- The biggest vulnerability for the RTW scheme

# Pre-approval of surgery

- Non-specific requests for approval are generally being rejected:
  - The exact nature of the surgery and/or the need for it are not specified
  - The likely date is not at least broadly projected
  - Medical evidence does not establish a clear need
  - Appears to happen where workers are only seeking to reserve their rights
  - Some disputed cases are transitional – eg *Camac v Coles Group Limited* [2016] SAET 49

# Safe Work Australia

- Commencing on project to develop a 'best practice' guide for managing psychological claims
- NCSI is working with ACCI in anticipation of a TAG being formed
- We have some doubts about the outcome. All psych claims are different and do not lend themselves to standardised practices
- What is 'best practice' anyway?

# Future of Crown claims management

- SISA has not been consulted, no firm info
- Following discussion is simple deduction
- The possible options:
  - Do nothing (probably the least likely) or:

Model	Delegations	Claims mgt	Claims funding	Set/collect premiums
Retain self-insurance with Crown shared services	Crown	Crown shared services unit	Crown	Not applicable
Retain self-insurance but align with private sector requirements	Crown	Crown agencies or shared services	Crown	Not applicable
Retain self-insurance with third party management	Crown	Third party agent	Crown	Not applicable

# The primary options

Model	Delegations	Claims mgt	Claims funding	Set/collect premiums
Retain self-insurance with powers sub-delegated to a third party	Third party agent	Third party agent	Crown	Not applicable
Revoke self-insurance	RTWSA	RTWSA agents	RTWSA	RTWSA
Crown managed central fund	Crown via managed fund	Crown via managed fund	Crown via managed fund	Crown via managed fund
Third party managed, Crown-owned central fund	Third party fund manager	Third party fund manager	Crown via managed fund	Third party fund manager
Privately underwritten scheme	Private underwriter	Private underwriter	Private underwriter	Private underwriter



# Future of Crown claims management

- There are some things to note:
  - The functions cannot be given to RTWSA or an agent while the Crown remains self-insured - *Delegated powers and discretions referred to in subsection (1) will not be exercised by the Corporation in relation to the workers of the self-insured employer. (Section 134(2))*
  - *The Governor may, by proclamation, declare that an agency or instrumentality of the Crown is not to be regarded as a self-insured employer, and in that event the agency or instrumentality will not be regarded as a self-insured employer. (Section 130(2))*

# Future of Crown claims management

- The general principle of delegated powers is that they cannot be sub-delegated unless the principal Act allows it. But it is a principle rather than black-letter law
- The real question is the extent to which there is an appetite to amend the RTW Act – if there is then anything is possible
- Without amendments, the range of options is more limited

# Future of Crown claims management

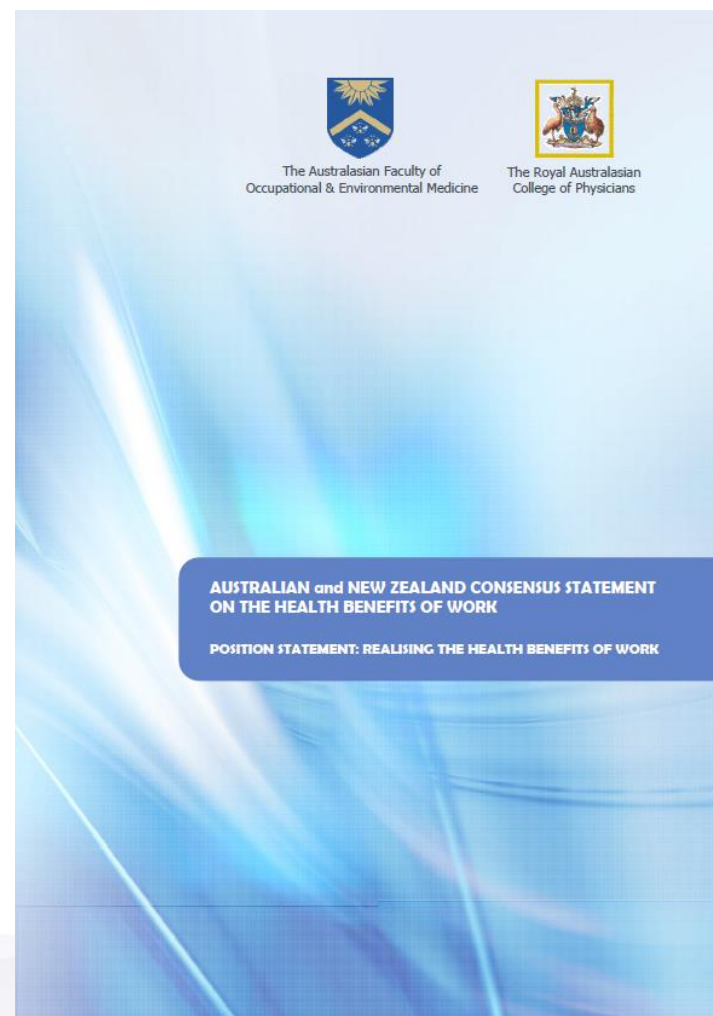
- If I was to speculate:
  - This is about efficiency rather than performance
  - Crown costs and liabilities have historically been good – unlikely that the review would have found otherwise
  - If there is a *rationale* for change, it might be the lack of price sensitivity – no premium experience exposure to drive improvement
  - If there is a *motivation* for change, the comments in Estimates C'tee B 28/7/16 are a heads-up
  - (And a big wedge of business for someone)

# Overview

- RTWSA and the MIR continue to spruik the position that being SI under the RTWA is in some way tougher – serious injuries, EL lump sums etc
- As if there were no serious injuries before the RTW Act!
- This has no factual basis - pure speculation – has never been discussed with SISA
- But appears to have been part of the discussion re Crown – see Hansard, Estimates B 28/7/16
- In my view it is a cover story designed to protect a less laudable motive

# Health Benefits of Good Work

- RACP/AFOEM currently updating the consensus statement
- ‘Good’ to be added to title
- SISA to become signatory to consensus statement
- Forum being held in Adelaide 9/11/16 at Crowne Plaza – more details to come
- Members encouraged to attend



## Other news

- Christine has finished up – welcome Gail Warren
- Save the date – 16/12/16 – SISA Xmas function
- SafeWork SA's new resource centre was opened by the Minister 11/10/16. 4<sup>th</sup> Floor 33 Richmond Rd Keswick
- SISA website upgrade will be completed soon

# Questions?

