



SISA Update November 2016

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Changes to Code

- Draft regulation to lift minimum guarantee & reduce scaling factor to 150% is in circulation but not yet published or tabled in Parliament.
- Muted response from members – no strong objection to increased minimum. We will not seek disallowance.
- Changes to SI application process.
- Actuarial guidelines – no longer required to include admin costs in valuations.
- Updated Code published 8/12/16

Bills

- *Return to Work (Weekly Payments Under Transitional Provisions) Amendment Bill 2016*
 - Defeated at 2nd reading 2/11/16
- *Work Health & Safety (Industrial Manslaughter) Amendment Bill 2015*
 - Standing Committee recommended that it not be progressed – no longer on the LC Notice Paper
- *Statutes Amendment (South Australian Employment Tribunal) Bill 2016*
 - Has received assent

ATO policy on redemption

- Was made final 23/11/16, effective 10/8/16
- ATO provided the following additional info:
 - Q: *Is the payment of a redemption of income support a withholding event?*
 - A: Yes. A weekly payment from an employer to an employee, based on the employee's usual weekly wage, would be subject to PAYG withholding if it is intended to cover the employee's inability to work for a period.

ATO policy on redemption

- Q: *Does a Payment Summary need to be issued?*
- A: Yes. You have to give each of your payees a payment summary showing how much you paid them for the financial year and how much you withheld from the payments.
- Q: *Must a payment summary be separate from the worker's annual summary or must it be included in the worker's annual summary, or will either be acceptable?*

ATO policy on redemption

- A: Generally the payment summary issued would be a single form reporting all payments and amounts withheld to the individual during the course of the financial year. It is permissible to report these amounts on separate forms (ie one for the regular weekly payment amounts and one for the redemption payment for example), but it is preferable to issue the one payment summary detailing total payments and amounts withheld during the year if possible to do so.

ATO policy on redemption

- Q: *Where a solicitor has provided a signed trust authority requiring that the redemption be paid into the solicitor's trust account:*
 - a) *Must the self-insurer withhold the tax prior to forwarding the net amount?*
- A: The obligation to withhold from a payment is imposed on the entity making the withholding payment. This would be the self-insurer in this example.

ATO policy on redemption

b) *Must the net amount be forwarded to the worker as wages or salary, or can the net amount be forwarded to the solicitor's trust account?*

The net amount should be forwarded to the solicitors trust account in accordance with the terms of the agreement covering the payment.

- *Q: If the payment is part of an Employment Termination Payment, does this change the answer to any of the above questions?*

ATO policy on redemption

A: No, not on the obligation to withhold from the payment. If the amount is an eligible termination payment an obligation to withhold from the payment is still imposed on the entity making the payment under s12-85 of the *Taxation Administration Act (1953)*. A payment summary would still be required.

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 27 submissions from injured workers, unions, lawyers, psychiatrists, business etc
- Committee will not take oral evidence until Parliament resumes in 2017

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

- The major risk - WPI
- The biggest vulnerability for the RTW scheme
- Litigation around thresholds is predictably increasing
- Recent case:
 - Are procedural fairness issues (eg choice of assessor) capable of rendering an assessment null and void?
 - According to DP Gilchrist J, they cannot – see *McBride v Teys Australia Pty Ltd* [2016] SAET 78
 - He held that the SAET lacks jurisdiction to hear such arguments

Reflections on RTWA state of play

- Another recent WPI case looked at whether a WPI assessment can be appealed even if no WPI determination has been made
- *Crespan v RTWSA [2016] SAET 73, 4/11/2016*
- DP Calligeros held that:
 - A WPI assessment for a physical injury is not in itself a reviewable decision
 - But an assessment for a psychiatric injury is reviewable if it shows that a worker is not seriously injured

Crown claims management

- SISA has had no role to play, was not consulted
- Is all very secretive
- See John Walsh's article from last week
- There seems to be no business case for it – the Crown has easily out-performed the Corporation across the years based on published information
- There is no way they could know what this will cost, so there is a hidden motive

Crown claims management

- If there is no business case, why do it?
- Short term:
 - RTWSA – sheer greed for premiums & unreasoning desire to reduce level of SI
 - Agents – financial CPR
- Longer term (next 2-3 years):
 - Position for private underwriting – will be the doom of the current agents (unless they become insurers – not likely). Repeat of the MAC exercise
- An inexcusable loss of experienced people

Crown claims management

- There are large risks here:
 - In any insurance pool, cross subsidies are inevitable – usually flow from large to small
 - Assuming there is a separate Crown premium pool, the cross-subsidies will be vast unless there is a super-sensitive experience rating component
 - The experience-rated cost to many agencies will inevitably be much greater than current SI costs
 - Can't see a single practical or financial thing that says this is a good idea; plenty of reasons why it isn't

Crown claims management

- How well-equipped generally is the scheme to manage the complex Crown arrangements?
 - The various Acts; eg Police, Education, Public Service, Courts – all set conditions that influence entitlements
 - Wide range of EBAs, most of which affect entitlements in different ways; example – who will pay *ex gratia* entitlements per the Police EBA, and how?
 - Many very complex claims – police, emergency services, corrections, secondary teaching...
- Seems to be a project in search of a reason!

Crown claims management

“...it is clear...that the overall performance of the self-insureds in respect of exactly the same statutory framework...is more impressive...the single most significant difference I have been able to ascertain from my looking at the problem is the effective personal attention they give to individual claimants.....”

Hon John Rau MP

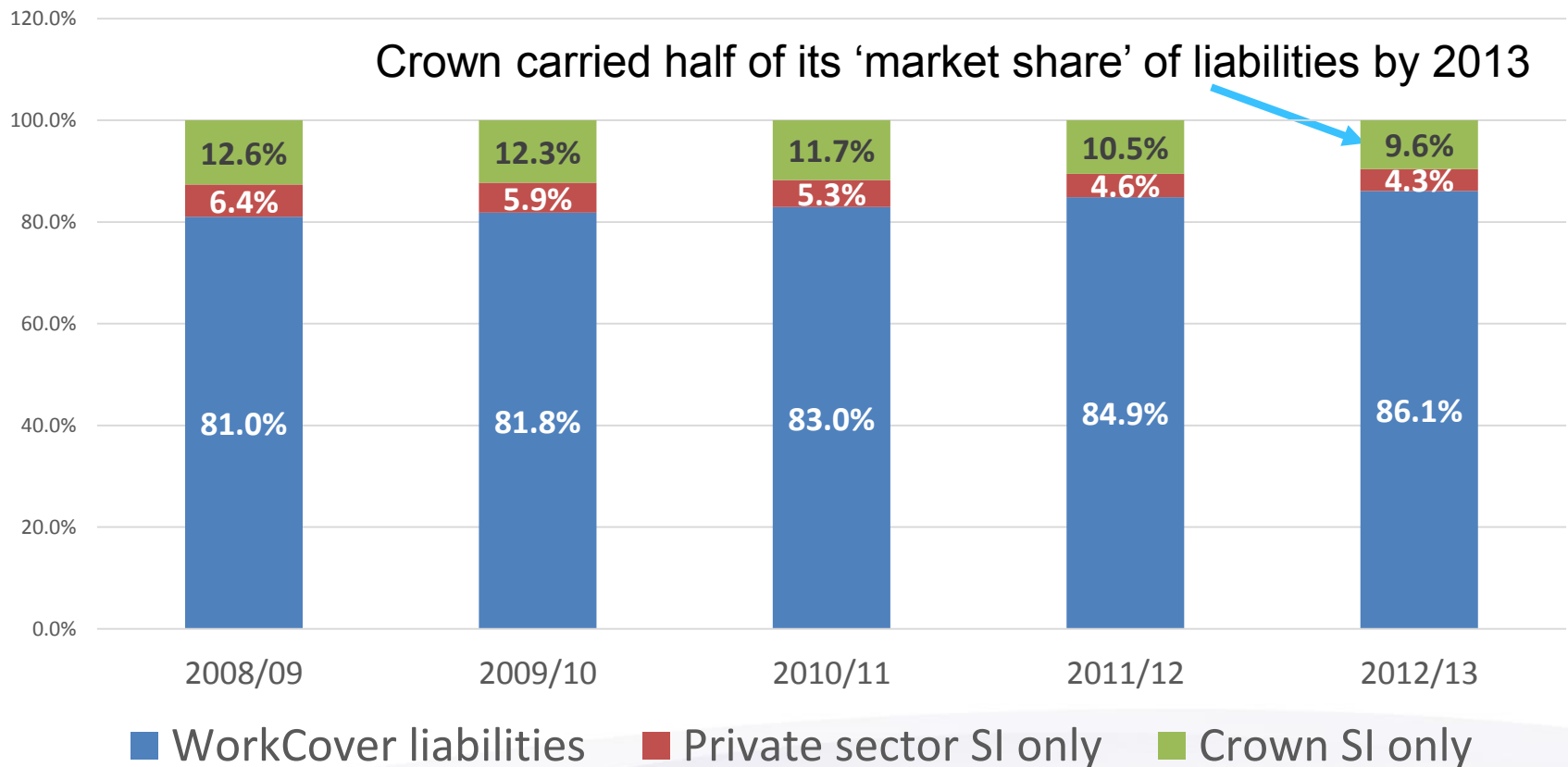
So the plan is to take that away in exchange for:

- Higher overall costs
- Risk of liability increases
- Reduced role of the workplace in recovery & RTW
- Major loss of expertise and knowledge

Nothing about this makes any sense...

Explain why you would want to stop this!

% of total State workers comp liabilities WorkCover v self insurers
WorkCover = 64% of scheme, Crown and Private SI 18% each



Some of the myths

1. The Corporation is the bees' knees when it comes to IM and RTW

That's not what the last 30 years of performance data shows. The self-insurers were and are in fact the bees' knees. It took a new Act to wipe out the unfunded liability – easy to look good with that level of help from Parliament!

2. Handling of complex claims

The Corporation took back all of the complex and serious injury claims some years ago. Why?

Some of the myths

3. Serious injury claims might be a problem for the self-insurers (incl Crown agencies)

This is an oft-peddled line with no basis in fact, previously (and unsuccessfully) used on the private-sector SIs. The RTW Act did not suddenly create these claims. We have been dealing with them better than the Corporation did for decades

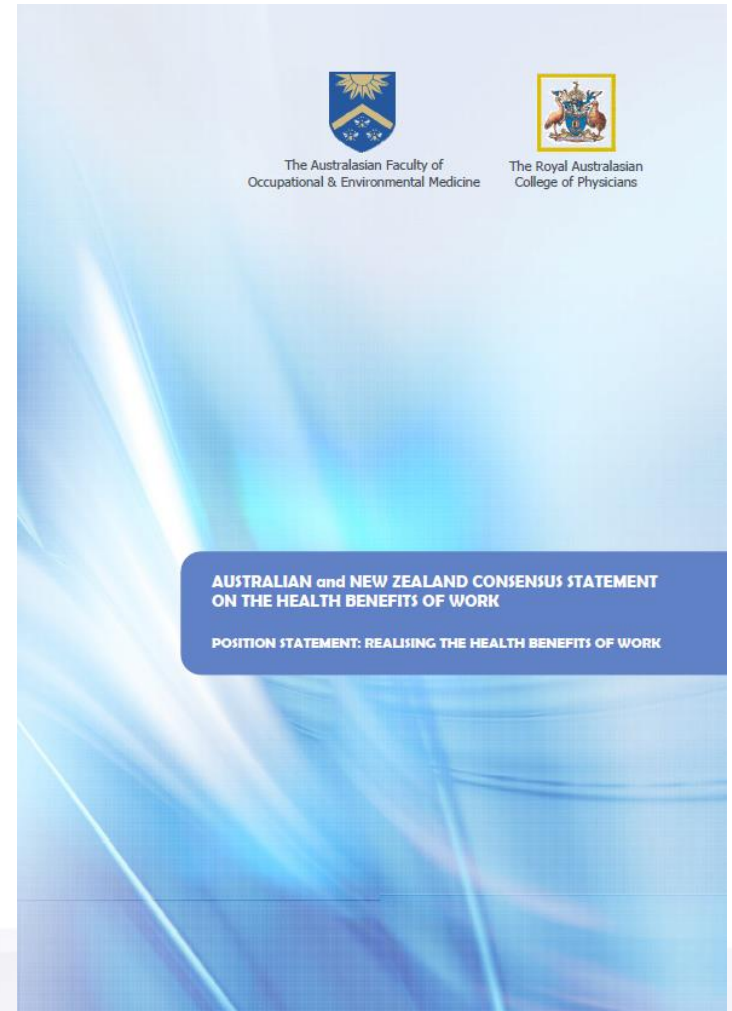
4. High levels of SI are bad for the scheme

Successive Corporation Boards have tried mightily to prove this is true in order to justify attacks on SI.

Successive consulting actuaries have told them it is simply untrue; in fact the reverse is the case

Health Benefits of Good Work

- Forum held in Adelaide 9/11/16 at Crowne Plaza
- Many SISA members attended
- SISA became a signatory to the consensus statement
- SISA now a member of the Signatories Steering Group
- SSG coordinates forums and other promotional activities
- Also being adopted by the NCSI



Other news

- 16/12/16 – SISA Xmas function at Crowne Plaza
- SISA website upgrade completed
- Member survey results:
 - More WHS subjects at GMs
 - Topical panel sessions to replace some presentations
 - Subsidised training opportunities
 - Generally high levels of satisfaction

Questions?

