



SISA Update June 2017

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Review of Code

- Awaiting Gazettal
- Issues can still arise in liability transfers
- One case where claim liability underestimated by \$120K
- Position re employee numbers still potentially problematic despite amendments
- Still no recognition of accreditation under Aust or international standards

Evaluation process

- Project to improve the clarity of scoping
- Further review of the IM standards
- IM evaluation is essentially a test of legal compliance of policy, procedure & claims mgt conformance with policy & procedure
- Guidelines simplified into flowcharts
- WHS standards – to review or not?
- SISA will continue to argue for recognition of WHS certification/accreditation

Bills

- *Work Health and Safety (Representative Assistance) Amendment Bill 2017*
 - Tabled by Greens, seeks to align SA Act with model
 - Would give HSRs broader powers to bring in 'assistance'
 - SISA is opposed due to risk to entry permit arrangements
 - Still in 2nd reading in LC

Bills

- *Return to Work Corporation of SA (Crown Claims Management) Amendment Bill 2017*
 - In Committee stage in LC
 - Due to resume 20/6/17
 - SA Water, Minda, RDNS & RSB probably off the hook
 - Opposition, Greens, NXT & DP all opposed unless Govt can properly answer questions as to why, what it will cost etc

RTWC Bill

- Questions from Hon K.L. Vincent (DP)
- *Why is the minister amending the Return to Work Corporation of South Australia Act 1984 rather than the Return to Work Act 2014?*
- *What is the purpose of management [sic] of workers' injuries to ReturnToWorkSA with Crown self-insurers when claims for 19 per cent of these workers equalled only 9.6 per cent of claims in the year 2012-13?*
- *What will happen to the highly skilled and experienced workers who currently work in SA government effectively managing injured workers?*

RTWC Bill

- *Is the government fattening up the ReturnToWorkSA cow for sale, as was done with the Motor Accident Commission?*
- *Could the minister please table the figures which demonstrate that this move is both economically sensible, sustainable and necessary?*
- If no adequate answers are forthcoming, the numbers *as they stand* are 12-9 against the Bill being read a 3rd time – but no guarantees
- Hard to know what more the Govt will do or say – nothing is certain in the LC
- Would they try a proclamation?

Hon K.L Vincent, 2nd reading speech

I also acknowledge that the Deputy Premier wrote to me the night before last requesting that the Legislative Council support the passing of this bill and contesting some of the concerns raised, but like other members I remain unconvinced. While I cannot be sure of the motives of this bill at this point (I have questions about that), to be frank, there is one way to make me suspicious of one's motives and that is to write to me saying that there is no secret plan. That is one way to make me think that there might be a secret plan: I was not born yesterday.

RTWC Bill (cont)

- Opposition obtaining the Bentley-Latham Report has been influential – Greens pressing for its general release
- Most unions are opposed, (except PASA)
- ALA wrote to all Upper House MPs asking them to reject the Bill
- Still some concerns about the SLA – a contract by any other name with all the risk on one side
- If the Bill is rejected, still unlikely things will stay the same

RTWSA December 2016 actuarial review

- Published later than usual without announcement; shows small actuarial release
- Emerging problem – numbers of transitional non-catastrophic serious injury claims exceeding forecast – some large SIs already seeing same
- If trend continues into post 1/7/15 claims, will pose a threat to scheme funding
- Partly driven by WPI assessment combination cases coming out of SAET

Serious injury claims

RTWSA December 2016 actuarial review

- Increase of 71 non-catastrophic serious injury claims – liability increase of \$73 million. Newly identified claims continue to exceed expectations, particularly on older accident periods...
- Likely cause - old claims with 20+% WPI &/or multiple injuries are successfully litigating to get pushed over the 30% level
- At least some of those could be resolved via redemption

Serious injury claims

- Bigger risk is if higher frequency of 30+% WPI is reflected in post 1/7/15 claims where redemption is less likely – no reason to think it won't be
- Some larger SIs reporting they are only seeing 30+% assessments since RTWA came into effect
- I'd say that we are already seeing leakage in the WPI system driven by the lure of long term benefits
- RTWSA actuary says weakness in WPI system is a significant risk to the scheme
- We said the same from day one of the RTW Act

Serious injury claims

- Issue was raised at RTWSA forum 25/5/15
- R Cordiner was asked what the plan is if higher numbers emerge in post 1/7/15 claims
- Stated flatly this won't happen
- When asked why he said high customer approval levels and reducing claim numbers – yep, that's what he actually said...



WHS round-up

- Not a lot of fresh news
- Pressure for investigation into dropping of cat 1 charges in nRAH death case (Castello-Riffo)
- No announcement yet on new ED of SWSA
- Revised SWSA structure seems to be working OK – education arm is gaining acceptance
- Main SWSA activity among SIs is manual handling audit of aged care sites – part of national project under SWA

Parliamentary Standing Committee

- SISA appeared 11/5/17 re inquiry into RTWA
- Represented by R Shaw, B. Loh (CCI/SISA Exec), J Hullick & T Gray (LGAWCS)
- Most Committee members asked questions – interest in 30+% WPI claims and mental health issues
- Overall went well
- Submissions, Hansard & interim report on [Committee page of SA Parliament website](#)

Recent key cases

- Key cases re WPI still on appeal
- Direct tensions between *Ledo* and *Tinti* (future surgery applications) – *Ledo* has been appealed
- *Robinson* [SAET 27, March 2017] – majority held that weekly payments can't be less than Federal minimum wage even after redemption. Gilchrist J dissenting
- *Lewis* [SAET 20], *Davies* [SAET 22], March 2017 – dealt with reasonableness of management action
- *Mitchell* [SAET 17, February 2017] - hearing loss and recovery rights for prior loss

Recent key cases (cont)

- *Mangano v Return to Work SA [2017] SAET 40 (11 May 2017)* – WPI – different injuries to same body part – no reduction of lump sum from prior assessment
- *TAFE SA v Roberts [2017] SAET 36 (5 May 2017)* Full Bench appeal – test of ‘a significant contributing cause’ – appeal dismissed
- Awaiting decision in *Preedy* on appeal to Full Bench – another important WPI assessment combination case – worker likely to win

Recent key cases (cont)

- *Lesiw v Return to Work SA SAET 45 (2 June 2017)*
 - Applicant a director & employee - part of duties as an employee was to manage employee w/comp claims
 - Psychiatric and physical injuries arising from duties accepted by consent orders in 2002 but worker never notified – began to self-medicate with alcohol
 - DP Dolphin found further severe injuries (brain damage) arising from alcohol use also compensable – high level of WPI likely

Recent key cases (cont)

- *Lesiw v Return to Work SA SAET 45 (2 June 2017)*
 - Shows that working directors can have duties as employees and duties as directors in the same role
 - And the consequences of failing to act on a consent order for 15 years!
 - A sad consequence – Mr Lesiw was the key person in the business – the deterioration in his health due to the lack of treatment & rehab over such a protracted period resulted in the company ceasing to trade last year with loss of 12-15 jobs

SAET

- Govt still claims big reduction in disputes
- Hard to reconcile with crowds at SAET!
- A lot of matters going on appeal
- Probably a lot of cases on hold awaiting appeal decisions
- AustLII seems slower to publish decisions
- Revised Rules on the way to incorporate recently added jurisdictions

Reflections on RTWA state of play

- Cessation of weekly payments on 28/6/17 will probably stimulate media coverage
 - Happening when Parlt Standing Committee is deliberating – impeccable timing!
 - Uptick in s.18(3) activity?
 - Claims of fresh traumas to revive transitional injuries?
 - Upward pressure on serious injury claim numbers?

Health Benefits of Good Work

- Forum in Sydney 31/5/17 aimed at union buy-in – try to dispel fear that HBGW is a front to reduce benefits or force premature RTW
- Hard to break the old myths
- Other activities include communication strategies, advocacy, workplace engagement



Other news

- Thomas Foods International & Lifecare commenced as self-insurers
- LHI Retirement Services - new applicant & member
- 4 other potential applications pending
- Save the dates:
 - Closing the Loop 20/7/17
 - SISA Awards 22/9/17
 - Both Sides of the Fence 13/10/17

Questions?



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