



## SISA Update December 2017

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**Sponsored by:**



# EDI upgrade

- Major upgrade of EDI technology to reduce errors and time demands
- Improved capabilities to give SI users the ability to directly access data, reports etc
- Consultation sessions held, updated specification released
- Target date for test sends April 2018
- No major issues raised so far - risk of duplicate workers remains

# Labour Hire Licencing Bill 2017

- Passed all stages of Parliament
- Primary issue was about who will be captured as 'labour hire'
- Definitions of 'labour hire' and 'worker' were amended prior to passage by LC
- Clear statements of intent were made on Hansard that should assist the Commissioner and courts to understand the intent
- See Leg Council Hansard 28/11/17

# Labour Hire Licencing Bill 2017

- Now awaiting the regulations
- SISA will provide broad advice on due diligence obligations
- Recommend members review the Hansard statements and seek legal advice on their own arrangements
- Act commences operation on 1 March 2018
- Providers must be licenced by 1 Sept 2018

## Other Bills

- *Work Health and Safety (Representative Assistance) Amendment Bill 2017*
  - Passed all stages
  - Effect of Bill was nullified by High Court refusal of leave to appeal that means that decision in *ABCC v Powell [2017] FCAFC 89 (2 June 2017)* will stand
  - People invited by HSRs must hold entry permit
- *Work Health and Safety (Notification of Next of Kin) Amendment Bill 2017*
  - Not being progressed

## Recent key SAET cases

- Key cases re WPI going on appeal to the FC of the SC:
  - *Brealy & Rullo* – physical causation
  - *Li* – psychological causation – **critical case**
  - *Rudduck & Karpathakis* – future medical costs
  - *Mitchell & Preedy* - WPI aggregation
  - *Robinson* - Federal Min Wage and redemption – heard but no judgement yet

## Recent key cases (cont)

- *Davill v Return to Work SA* [2017] SAET 125 – issue of costs when a worker withdraws a s.18(3) application – held that RTWSA (or a SI) pays costs – Govt has drafted variation regulations to correct
- *Reavill v Return to Work SA* [2017] SAET 148 – application for declaratory judgement rejected
- *Mastromihalis v Return to Work SA* [2017] SAET 158 - application for declaratory judgement granted
- *Roberts v Return to Work SA* [2017] SAET 160 – injuries sustained at home as consequence of compensable injuries also compensable

## RTWA - state of play

- SISA currently considering proposed variation regulations dealing with legal costs
- Legal advice was obtained – highly complex
- One effect would be to correct *Davill* decision on s.18 costs
- Govt is trying to force the pace due to dwindling time to get to Cabinet
- One question is an amendment to SAET regulations



## Proposed change to SAET costs regs

- Proposed amendment to SAET regulations renders the charges laid for coercive or discriminatory conduct under the WHS Act a no costs jurisdiction
- Would mean that where charges are laid and withdrawn, the defendant can't get costs
- Unsure if this is a major issue or not

# Future of SISA Awards

- Relatively few responses to member survey
- Indicates lack of interest in current format
- Need to direct funds to what members need
- SISA remains committed to promoting excellence among members
- Working groups currently considering alternative vehicles and formats
- Suggestions welcome

# Standing Committee report on RTWA

- Tabled in Parliament 14/11/17
- Of the 18 recommendations:
  - Does not affect SIs or not opposed – 13
  - Opposed by SISA – 4
  - Just plain silly – 1
- Report itself unlikely to directly result in change
- But will no doubt be read by Mansfield as part of 2018 review

# Standing Committee report on RTWA

- Opposed recommendations:
  - Amend section 7(1)(2)(b)(i) by replacing ‘the significant cause’ with ‘a significant cause’
  - Include a narrative test to supplement the WPI assessment processes
  - Future surgery be payable without pre-approval
  - Allow workers with a psychiatric injury to receive payments for economic loss and non-economic loss

# Review of RTWA 2018

- Commenced 4/12/17
- To be conducted by Hon John Mansfield AM
- Retired FC judge, no previous judicial role in personal injury law, no known political leanings
- Have made ourselves known to Mr Mansfield
- He plans to contact all stakeholders by letter
- Format of review as yet unknown
- SISA has started building submission

# Review of RTWA 2018

- Terms of reference are very vague
- Seem to avoid calling for comments on technical aspects – won't stop us though...
- Talk about 'performance' is nebulous at best
- Reviewer will likely struggle to answer some TOR with any precision
- Likely to find scheme is far from stable and mature and this review is premature

# Audiology fee update

- 2<sup>nd</sup> try at this
- Has already been done interstate
- Overdue in SA
- Will curb some questionable practices
- But may not stop touting
- Will greatly assist in containing NIHL costs
- Audiology industry will try to stop it
- Consultation session held by RTWSA

# SISA office hours

We will close midday  
22/12/17 and re-open on  
2/1/17



Have a safe and happy Xmas & new year



*Merry Christmas*

# Questions?

