



SISA Update October 2015

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Return to Work Act 2014

- First s.18(3) applications reaching SAET
- DP Dolphin has stated his view that s.18(3) is available to workers who are still employed by pre-injury employer
- SISA and many lawyers disagree – needs testing
- Influence of *Longyear Australia Pty Ltd v. the Corporation* (SCGRG 94/1494 SASC 4951 (7 February 1995)) over SAET's views re SIs.

Return to Work Act 2014

- Another key point to test – to what extent will SAET consider a paid resignation a constructive dismissal and allow s.18(3) applications to proceed?
- Is resignation really the ‘silver bullet’?
- Haven’t heard of any issues with WPI assessor selection as yet
- Still have lingering doubts about validity of the rules set out in the Guidelines

Return to Work Act 2014

- Other things generating questions:
 - EBA changes or other economic adjustments to IM payments – can they be applied in the absence of a requirement in the Act?
 - Answer is yes – the Act only sets the minimum entitlement. There is no bar to a SI exceeding the minimum if it chooses to.
 - Are we *required* to pro-actively offer WPI assessments to workers who did not have one under the repealed Act? No – the Act *allows* the worker to apply

Legislative Developments

- *Work Health and Safety (Industrial Manslaughter) Amendment Bill* will be progressed in Parliament
- SISA view – Bill is redundant. The recent Colbert* case demonstrates that the law as it stands is more than adequate

(*Peter Francis Colbert was jailed for 12 years and 6 months, with a non-parole period of 10 years, for the manslaughter of employee Robert Brimson, whose truck brakes failed, leading to the truck hitting a pole, killing Brimson).

Legislative Developments

- *Police (Return to Work) Amendment Bill 2015*
- Tabled by Hon Rob Brokenshire MP 15/10/15
- Seeks to amend *Police Act 1998* to modify operation of RTW Act primarily by:
 - Removing 2 & 3 year caps on weekly and medical benefits for police officers
 - Re-introducing economic adjustments to weekly benefits for police officers
- Changes would be confined to police – until...

Legislative Developments

- SISA position on *Police (Return to Work) Amendment Bill 2015*:
 - Do not support a two-class system based on occupation - risk of bracket creep is high
 - Spread of such changes will undermine the scheme
 - The RTW Act already has a tiered approach to benefits by degree of WPI
 - Many other workers are exposed to equally risky, or even more risky environments

WHS

- SafeWork SA – Marie Boland is new ED, Directors & inspectors still being recruited
- Lots of technical tweaking of model WHS regulations at national level, COP etc but not yet reflected in SA
- Otherwise very quiet in WHS land

RTWSA

- Has been talking to some small SIs & employers considering SI re remaining as premium-payers or returning to scheme
- Emphasising new service model, lower premiums etc
- Premium discounts might be considered
- None have been persuaded that we are aware of
- Another revision of the Code on the way

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
- SISA talking with LSSA with view to common position opposing ATO (in absence of member comment)
- RTWSA seeking SC opinion
- How important will IM redemption be under RTWA?
- Plan B – workarounds?

New full members

- James Brown Memorial Trust (Aug 2015)
- ACHA (Sept 2015)
- Expected in 2016:
 - Helping Hand Aged Care
 - Veolia
 - Thomas Foods International
 - St Andrews Hospital

Events

- SISA Awards Dinner 25/9/2015 – event was successful but somewhat smaller
- See SISA website for list of winners
- Next year planning has started – George Kapiniaris back by popular demand!
- Start considering potential nominations
- NCSI Conference cancelled due to low numbers
- SISA Xmas drinks 4/12/15 at Crowne Plaza, after December GM

Questions?

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“We could try a larger monitor with an ergonomic glare filter...but you’re still going to get headaches if you keep banging your head against the screen.”