



SISA Update June 2016

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Proposed changes to Code

- RTWSA to press ahead with regulation to lift minimum guarantee to \$1.1 million effective 1/1/18 & reduce scaling factor to 150%
- SISA has obtained detailed actuarial advice to rebut RTWSA's reasoning
- Advice says no justification for even having a minimum, let alone raising it
- SISA will use advice to seek disallowance of the regulation when it is tabled in Parliament

Amendments to the SAET Act

- Amendments would add the following to SAET jurisdiction:
 - Capacity to sit as the SA Employment Court
 - Criminal jurisdiction
 - Common law claims under RTWA
 - State & Commonwealth Fair Work Acts
 - Dust Diseases Act claims
 - Construction Industry LSL Act
 - Education Act

Amendments to the SAET Act

- Amendments would add the following to SAET jurisdiction:
 - Fire & Emergency Services Act
 - Industrial Referral Agreements Act
 - Long Service Leave Act
 - Police Act
 - Public Sector Act
 - TAFE Act
 - Training & Skills Development Act
 - WHS Act

Amendments to the SAET Act

- Will require President to be Judge of Supreme Court
- State IRC & various management, arbitral & disciplinary boards, commissions etc to be disbanded
- Allows for establishment of supplementary panels
- SAET will deal with summary & minor indictable offences but not major indictable offences

Amendments to the SAET Act

- So far no visible impact on RTW jurisdiction
- No concerns raised so far by members
- Business SA has commented on increased authority over Training & Skills Development Act matters
- Does represent a significant gathering of powers to a single tribunal
- But may serve to simplify jurisdiction – eg will take some minor matters out of District Court

Pennington v RTWSA [2016] SAET 21

- Worker on RISE placement & issued s.36 notice prior to 1/7/15
- Employer liquidated post-1/7/15; worker sought weekly payments
- Full Bench of the SAET held that clause 37(6) of the transitional provisions barred access to weekly payments
- Worker's case characterised as 'falling between the cracks'

Implications of *Pennington*

- I think there are no cracks; clause 37(6) is unequivocal with clear intent; but:
 - What about a worker who has an active s.36 notice but is found to be seriously injured?
 - What about a worker who had weekly payments accepted for a closed period with no s.36 notice under the repealed Act?
- If either were the case in *Pennington*, the outcome may well have been different
- Expect more of these cases in coming year

Implications of *Pennington*

- The Full Bench commented:
“the risk in focusing on the outcome produced by a particular construction and measuring it by notions of fairness is that it may lead judges to put their own ideas of justice or social policy in place of the words of the statute”
- Was this a policy statement for the benefit of the rest of the SAET?

ATO policy on redemption

- Still no final decision
- Rulings Panel has delayed release of formal consultation phase until September 2016
- It seems inevitable that income redemption will be held to be assessable
- According to the ATO, any final ruling will not be retrospective
- SISA maintaining contact with the ATO

Industrial Manslaughter Bill

- SISA Chair & Manager appeared before Parliamentary Standing Committee re Industrial Manslaughter Bill 26/5/16
- Review of Hansard shows that Government & Opposition oppose the Bill
- Unlikely to progress beyond 2nd reading
- May lapse anyway if it is still under review by the next election

Proposed review of RTWA

- Hon Tammy Franks moved on 25/5/16 that a select committee of the Legislative Council be established to inquire into—

(a) The potential impacts on injured workers and their families as a result of changes to the Return to Work Act including tightening of the eligibility criteria for entry into the Return to Work Scheme;

(b) Alternatives to the 30 per cent WPI threshold for ongoing entitlements to weekly payments;

(c) The current restrictions on medical entitlements for injured workers;

(d) Potentially adverse impacts of the current two year entitlements to weekly payments;

Proposed review of RTWA

- (e) The restriction on accessing common law remedies for injured workers with a less than 30 per cent WPI;
 - (f) Matters relating to and the impacts of assessing accumulative injuries;
 - (g) The obligations on employers to provide suitable alternative employment for injured workers;
 - (h) The impact of transitional provisions under the Return to Work Act 2014;
 - (i) Workers compensation in other Australian jurisdictions which may be relevant to the inquiry, including examination of the thresholds imposed in other states ;
 - (j) The adverse impacts of the injury scale value
- Hon John Darley MLC supported the motion
 - Debate scheduled to resume 22/6/16

Transitional WPI assessments

- *Return to Work (Transitional Arrangements) (General) Regulations 2015* allow a worker to be further assessed where assessment under repealed Act did not cover all injuries
- Right to apply expires at end of this month
- Assessments to be made under the previous WorkCover Guidelines
- Queries to Kirstie O'Callaghan at RTWSA 8238 5727

Other news

- SISA Awards – nominations close 24/6/16
- Closing the Loop 28/7/16 – great program, great price; be sure to register
- Note the revised employer registration & reconciliation forms as published in *Gazette* 12/5/16
- 2016 medical fee schedules take effect 1/7/16 – SISA document library has been updated

Questions?

