



SISA Update August 2020

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SISA members in the COVID-19 pandemic

- Appears that a majority of members have adapted and travelled through the situation well to date
- Team splitting, shift separation and working from home commonest approaches
- Social distancing achievable in production environments
- Some industries reported upturns in business
- Example – Kimberly-Clark was producing 17 B-double loads of toilet paper every 24 hours
- SISA staff mostly working from home

Legislation

- *Automated External Defibrillators (Public Access) Bill 2020* – still in 2nd reading in Upper House; Govt likely to oppose
- *Return to Work (Post Traumatic Stress Disorder) Amendment Bill 2020* - still in 2nd reading in Upper House; Govt likely to oppose
- *Labour Hire Licencing (Miscellaneous) Amendment Act 2020* – has been proclaimed and came into effect 20/7/20. LHL Act now only applies to prescribed industries

Legislation

- *Return to Work (COVID-19) Amendment Bill 2020* – Greens Bill, still in 2nd reading in Upper House; Govt will oppose, Labor now likely to support after loss of their Bill
- *Return to Work (COVID-19 Injury) Amendment Bill 2020* – Labor Bill – passed Upper House, still in 2nd reading in Lower House, Govt will oppose, likely to be defeated

Potentially important case law

- *Morris v Department for Child Protection [2020] SAET 92* – seriously injured worker was convicted of criminal offences & imprisoned. Worker dismissed for S&W misconduct
- Single DPJ held that seriously injured workers must not unreasonably cease suitable employment, must perform suitable duties on offer and take steps to find suitable employment where capacity exists
- Further held that seriously injured workers can be discontinued where a breach of mutuality exists

Potentially important case law (cont)

- DPJ identified elements of sections 3, 15 and 43 that obliged all injured workers with work capacity to seek or maintain suitable employment with no exclusion of seriously injured workers – while s.21 is silent on the issue
- Arguable that the 1st 3 elements of the Standards of Service likewise point in that direction
- Whereas s.25(11) only precludes a RRTW plan from placing RTW obligations on seriously injured workers. In the absence of a plan, the other sections still impose the obligations
- Appears to be an internal conflict in the Act not previously identified
- Awaiting resolution of residual matter – likely to be appealed

Recent SAET cases

- *Wrightville Services Pty Ltd v RTWSA* [2020] SAET 93 – application to overturn claim acceptances upheld
- *Elliott v RTWSA* [2020] SAET 50 – dependency on deceased worker and Centrelink benefits. Held that changes to Centrelink benefits are not relevant for the purposes of s.60(4) reviews
- *Ilea v RTWSA* [2020] SAET 51 – held that worker acted unreasonably in pursuing 2 appeals. Ordered to pay RTWSA costs

Recent SAET cases

- *McPhail v RTWSA* [2020] SAET 53 – Full Bench confirmed that nerve block procedure is not surgery for the purposes of s.33(20).
- *Opie v RTWSA* [2020] SAET 62 – discussion of how to assess 2 separate back injuries. Held that the worker entitled to the method that yields the highest WPI result per 1.38 of the Guidelines
- *Ng v South Australia Police* [2020] SAET 63 – claim rejections upheld; worker found to be unreliable witness. Later decision SAET 92 saw costs awarded against the worker

Recent SAET cases

- *Davies v Woolworths Group Ltd* [2020] SAET 65 – communications between worker and union prior to engaging legal advice held to be no privileged
- *Kimber v SA Ambulance Service* [2020] SAET 82 – held that worker was placed in a dangerous situation when handling stretcher. Rejection of claim for extended benefits under Award overturned
- *RTWSA v Cooper* [2020] SAET 117 – successful appeal against single DPJ decision to give interim seriously injured status

Recent SAET & Full Court of the Supreme Court cases

- *Stoddard v RAA* 2020 SAET 141 – claim accepted for closed period without s.48 discontinuance being issued. Commissioner ordered suspension of decision. SAET held that Commissioner had no jurisdiction
- *Education v Van Hattem (#2)* 2020 SASFC 45 – discussion & decision on the meaning of ‘the significant contributing factor’

SISA news

- Planning for Closing the Loop 2020 transferred to 2021 event.
- SISA taking steps to implement on-line member options:
 - Live virtual classrooms
 - Live streaming of events
 - On-demand access to recorded sessions & events via website
 - Website improvements

SISA news

- Waiving of 6 months of member fees partially offset by State & Federal assistance
- Is achievable because we were in a sound financial position beforehand

Questions?

