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CURRENT IMPORTANT ISSUES IN THE WORKERS COMPENSATION SCHEME

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[1] Publication of Nominal Insurer Fund Valuations

WIRO regularly received copies of the quarterly and half yearly reports.

For some reason this has ceased.

I would ask for clarity as to who is responsible for their circulation.

[2] Publication of SIRA Claim form

Given that WIRO has been providing funding for lawyers to assist workers in correctly completing the claim form for over four years is there some reason why there is no reference to this service being available to assist workers.

The primary earnings details do not relate to the required information for PIAWE purposes.

[3] Compromise WPI resolutions

The Standing Committee on Law & Justice has recommended that lump sum compensation claims be the subject of a compromise. This was in 2015. Nothing has happened.

Removal of this barrier would reduce the number of cases which have to be finally dealt with in the WCC by half. Maintaining this restriction is without any justification and simply extends the emotion and anguish that workers face.

[4] Compliance by Specialists with Fees Order

There is substantial non-compliance by specialists. There does not appear to be any remedy. The injured workers are being asked to carry this additional cost for which they are never reimbursed.

[5] Protocol for surgery/treatment requests

One of the regular complaints that WIRO receives is about delays and confusion about simple requests for approval of surgery. These are often complicated because the details the insurer requires are not provided and have to be followed up with further unnecessary delay.

Even a simple form which is not mandatory would be of assistance along with a recommended time for response.

[6] WCD review stays

This remains a subject of confusion and contention. WIRO has made it very clear as to the operation of the legislation. It is unacceptable that the insurers appear to be given contrary directions. Yet again the worker is penalised and the Minister's public statements contradicted.

[7] "Suitable employment" – who rules

There are different approaches to the interpretation of "suitable employment" by the SIRA Merit Review Service and the WCC. While the WCC decisions are published and may be understood (whether agreed to or not) the only inkling that is apparent from the MRS recommendations are those which are noticed from the decisions available to the particular insurer.

The workers have no prospect of understanding the process.

[8] Sect 54 & 74 Notice periods

There is a general failure by insurers to correctly provide the proper notice to injured workers. The compliance is better with work capacity decisions than liability decisions however it seems that the insurers fail to actually correctly work out the time periods.

[9] Pre approval of medicals – insurer unknown

This needs attention as the worker is left with no remedy when the insurer is unknown or is incorrectly identified.

[10] Protocol for interstate disputes

The emotional distress and financial delay and then the delay in final determination together with the financial cost to the system as well as for the injured worker is unhelpful.

Surely it is possible to implement a protocol as to how these disputes are to be best managed.

[11] Pre 2002 Injuries – assessment of impairment

There is at present no entitlement for an injured worker to be assessed by an approved medical specialist for the purpose of obtaining a Certificate (MAC) under the Table of Disabilities which may be required in a dispute about lump sum compensation where the injury was prior to 1 January 2002. (s.322(1)).

[12] Pre 2002 injuries – hearing loss

The incorrect decision of the WCC and its continuing impact is causing confusion and permitting payments which are not authorised by the legislation.

[13] WCC decisions – "and continuing"

The WCC continues to issue decisions which are stated to be "and continuing" in relation to weekly payments. Obviously this is misleading for the worker because these "awards" are subject to the work capacity decision regime which may determine a different outcome within days of that WCC determination.

[14] WCC decisions – ignoring WCD

There is a regular theme in the WCC whereby existing work capacity decisions are not followed. This is often because the arbitrator is not made aware of any such decision. The award often gives credit for payments already made which indicates that a work capacity decision must have been made.

[15] Communications from insurers – reference to WCC – pointless

There continues in many (if not all) communications from insurers that gives workers the address of the WCC with information which would imply that the worker may contact the WCC directly and lodge applications for remedies.

This is simply a waste of typewriting.

Workers do not and would generally not be able to navigate the complex processes.

The WCC would not accept applications that are not well supported.

[16] PIAWE Insurer/Employer error – backdating

There is no consistency between insurers, internal review and Merit reviews about the entitlement to retro adjust an error in a PIAWE determination in a work capacity decision. As any change is a new work capacity decision it can only work forwards.

[17] Provision of Insurer information to workers

There is inconsistency with insurer behaviour.

[18] Costs in WCD merit review

Given the alternate view of SIRA about these decisions the reality is that a lawyer is entitled to charge the insurer $7,200 for each single notification when it contains multiple discrete work capacity decisions.

[19] WID Costs

There is still significant overcharging by lawyers in the common law compensation field.

[20] Definition of "week"

There is still imbalance for many workers with this interpretation. It was well settled before the relevant section was accidentally omitted in the 2012 reforms.

[21] The Section 39 shambles.

[22] Section 59A – the threshold measurement barriers