

Public Sector Workforce Relations

Meeting New Challenges in Workforce Wellbeing

-Provisional Liability and Accountability-

Presented by

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Provisional Liability – Medical Expenses

Section 32A

- ⇒ Allows payment of costs “within ambit of section 32” before the determination of a claim
- ⇒ Up to a maximum of \$5 000 (indexed)
- ⇒ Payment does not constitute admission of liability
- ⇒ Payment discharges any liability under section 32 for the same cost

Provisional Liability – Medical Expenses

Section 32A

⇒ Allows recovery of payments if:

(a) it is subsequently determined that claim is not compensable

– and –

(b) worker has acted dishonestly in applying for provisional payment

⇒ More restrictive than section 106 – interim payments

Provisional Liability – Medical Expenses

Section 32A

⇒ The following decisions are not reviewable:

(a) a decision to accept or not accept liability under this section

(b) a decision to make or not to make a payment under this section

[What about a decision to pay only a part of a cost?]

(c) a decision to exercise or not to exercise a right of recovery under this section

Provisional Liability – Medical Expenses

Section 32A

⇒ There are no guidelines setting criteria for when to accept provisional liability

⇒ The decision to make a payment under Section 32A is entirely discretionary

Provisional Liability – Medical Expenses

Section 32A

⇒ If provisional liability is refused, worker may require formal determination under section 53 and then dispute decision in the Tribunal

⇒ The WorkCover Ombudsman can receive and investigate complaints about a refusal of provisional liability unless and until a formal determination under section 53 is made

Provisional Liability – Medical Expenses

Section 32A

⇒ If right of recovery is exercised, worker can refuse to pay and then defend any court action in the usual way

⇒ The WorkCover Ombudsman can receive and investigate complaints about a decision to recover a payment unless and until the recovery becomes the subject of litigation

Provisional Liability – Weekly Payments

Sections 50A - I

- ⇒ Mandates payment of weekly payments within 7 days after initial notification unless there is “a reasonable excuse”
- ⇒ Payments are to be made in accordance with Provisional Payment Guidelines (PPG)
- ⇒ Maximum period of 13 weeks
- ⇒ Discretion to continue payments beyond 13 weeks
- ⇒ Payment does not constitute admission of liability
- ⇒ Payments may cease in accordance with PPG

Provisional Liability – Weekly Payments

Sections 50A - I

⇒ Payments are recoverable if:

- (a) it is determined that the disability is not compensable
– and –
- (b) the worker has been dishonest in making the application for provisional payments

Provisional Liability – Weekly Payments

Sections 50A - I

⇒ The following decisions are not reviewable:

(a) a decision to make a provisional weekly payment

(b) a decision to not make a provisional weekly payment
“after it is established that there is a reasonable excuse”

[Is a refusal that lacks a reasonable excuse reviewable?]

(c) a decision to discontinue payments

(d) a decision to continue or not continue payments
beyond 13 weeks

(e) a decision to exercise or not exercise a right of
recovery

Provisional Liability – Weekly Payments

Sections 50A - I

⇒ What can a worker do about a decision to not make a provisional weekly payment or to discontinue payments?

(a) Require a determination of a claim under section 53 and then dispute decision in the Tribunal

(b) Negotiate with the Claims Manager

(c) Complain to WorkCoverSA

(d) Complain to the relevant Minister (in the case of crown agencies)

OR....

Provisional Liability – Weekly Payments

Sections 50A - I

⇒ (e) Complain to the WorkCover Ombudsman
(but only if a formal determination under section 53 has
not been made)

Provisional Liability – Weekly Payments

Sections 50A – I

⇒ What can a worker do about a decision to exercise a right of recovery?

(a) The worker can refuse to pay and then defend any court action in the usual way

(b) The WorkCover Ombudsman can receive and investigate complaints about a decision to recover a payment unless and until the recovery becomes the subject of litigation

Provisional Liability and Accountability

Summary

⇒ Provisional liability for medical expenses:

(a) is entirely discretionary with no set criteria

(b) accountability is minimal

(c) workers will have to press ahead with a formal claim if unhappy with refusal

⇒ Provisional liability for weekly payments:

(a) is mandatory with criteria governed by PPG

(b) self-insurers will be accountable to WorkCoverSA for compliance with PPG

(c) workers have some avenues for complaint if unhappy with decisions

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Questions?

The End - Thankyou