



Workers Compensation Independent Review Office  
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The Chair,  
Standing Committee on Law & Justice,  
Parliament House  
SYDNEY NSW 2000  
By Email: [helen.hong@parliament.nsw.gov.au](mailto:helen.hong@parliament.nsw.gov.au)

Dear Madam,

I refer to your email of 30 July 2018.

I provide the answers to the questions on notice:

[1] **THE CHAIR:** Are you able to assist the Committee with some data in order that we might learn from other jurisdictions, if there are learnings to be had? Do you have access to such data?

**Mr GARLING:** Probably five years ago now the office joined the International Association of Industrial Accident Boards and Commissions [IAIABC] based in the United States. It has as its regular members the individual States in the United States of America and the provinces from Canada, and five years ago it started to attract international attention. I have been to six of those meetings at various different places in the United States. We have had presentations by the Indonesian workers compensation group and they have formed the Asian workers compensation group. We have got a summary of every system in Asia and how it works. Interestingly, the Indonesians had come up with a solution to the Uber gig economy because their Uber is not flash-looking cars but motorbikes. They found a solution to that. At the last meeting I went to the South Koreans had a major presentation. In addition to that, we have had the Austrians and the Germans as regular participants. We have learnt from those experiences.

We can provide the Committee with more information but it is a lot of detail. Essentially there is nothing the same. Everyone is different and they are generally different because of the marketplace. You will have adjoining States in the United States with different processes even though they are substantially similar. As a matter of interest, we have been invited to address the State of Virginia's Workers Compensation Commission about the introduction of a WIRO in their jurisdiction and while there are Ombudsman's offices—there are only eight or nine—they operate completely differently. By way of additional comment because I know of the

member's interest, the Austrians recently commissioned a study by the London School of Economics into how a workers compensation system fits in where you have a Medicare system. I do not think the report was very helpful but they were at least looking at it. We do have exposure to that. We can give you a summary of the United States and Canadian jurisdictions. We are very well received over there. I have given presentations and spoken on a number of occasions.

**The CHAIR:** Thank you. I am sure that we can learn from each other. Would you please take that as a question on notice.

Response:

Attached is a report issued by the International Association of Industrial Accident Boards and Commissions (IAIABC) containing a summary of the profiles of the USA Workers Compensation Agency Profiles (2013 Edition).

Attached is a copy of the Paper delivered by the Chairman of Asian Workers Compensation Forum (AWCF) delivered at the IAIABC Convention in October 2017

[2] **The Hon. TREVOR KHAN:** How long has it been since you had a meeting?  
**Mr GARLING:** I would have to take that on notice so I do not put my foot in it, but it has been some time.

Response

SIRA was established on 1 September 2015.

I attach a list of meetings since then in which SIRA and my office have been involved. While there have been meetings which involve other groups the last WIRO specific SIRA meeting was on 5 April 2017.

I also attach the agenda for that meeting.

The classic example is the Hearing Loss project which was stymied because a Deputy-Secretary at DFSI refused to fund less than \$30,000 for the final software product to enable the model to be operational. No explanation was provided.

The project was terminated.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kim Garling', with a horizontal line underneath.

KA Garling



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E: [kim.garling@wiro.nsw.gov.au](mailto:kim.garling@wiro.nsw.gov.au)

17 August 2018

- [3] **Mr DAVID SHOEBRIDGE:** This Committee has previously recommended that your office be an independent statutory office, would that assist?
- Mr GARLING:** Yes. That has not progressed.
- Mr DAVID SHOEBRIDGE:** If you could provide on notice the proposed form of words or recommendation that we could consider that would direct the Government towards implementing the changes for hearing aids, that would be of assistance. I have read your submission that identifies the general structure.
- Mr GARLING:** I am happy to do that.
- Mr DAVID SHOEBRIDGE:** The wording would be helpful.
- Mr GARLING:** I am happy to do that.

Response:

The 2014 SCLJ Report recommended:

“That the NSW Government amend Part 3 of Schedule 1 of the Government Sector Employment Act 2013 to designate the WorkCover Independent Review Office as a separate public-sector agency.”

Section 24(6) of the *Workplace Injury Management and Workers Compensation Act 1998* provides:

“(6) Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Independent Review Officer to exercise his or her functions.

**Note.**

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Independent Review Officer makes use of) may be referred to as officers or employees, or members of staff, of that Officer. Section 47A of the *Constitution Act 1902* precludes that Officer from employing staff.

The arrangement for provision of staff, salary levels and promotion opportunities within the WIRO office are all subject to the requirements of the Department of Finance, Services and Innovation (DFSI). These are often not compatible with the special skills that employees in the WIRO office should achieve.

The other barrier to the independence of WIRO is the control by DFSI and also SIRA over proposed projects by WIRO even where these are within delegated authority and within budget.

This direct control is a fetter on my independence.



# Workers' Compensation in Asia

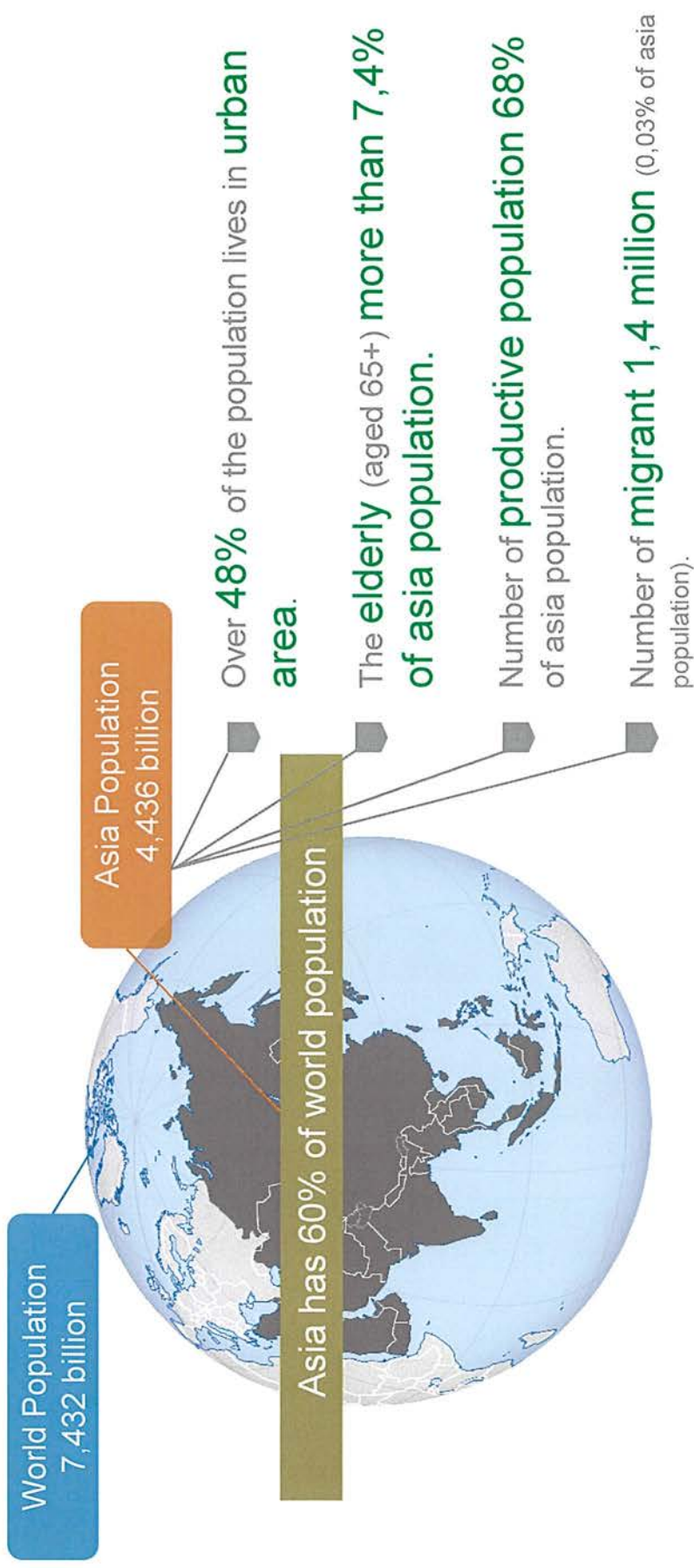
"The scheme among AWCF countries and jurisdiction report of Indonesia"

**AGUS SUSANTO**  
President Director/  
Chairman of Asian Workers' Compensation Forum (AWCF)

IAIABC Convention  
Portland, 02 – 05 October 2017

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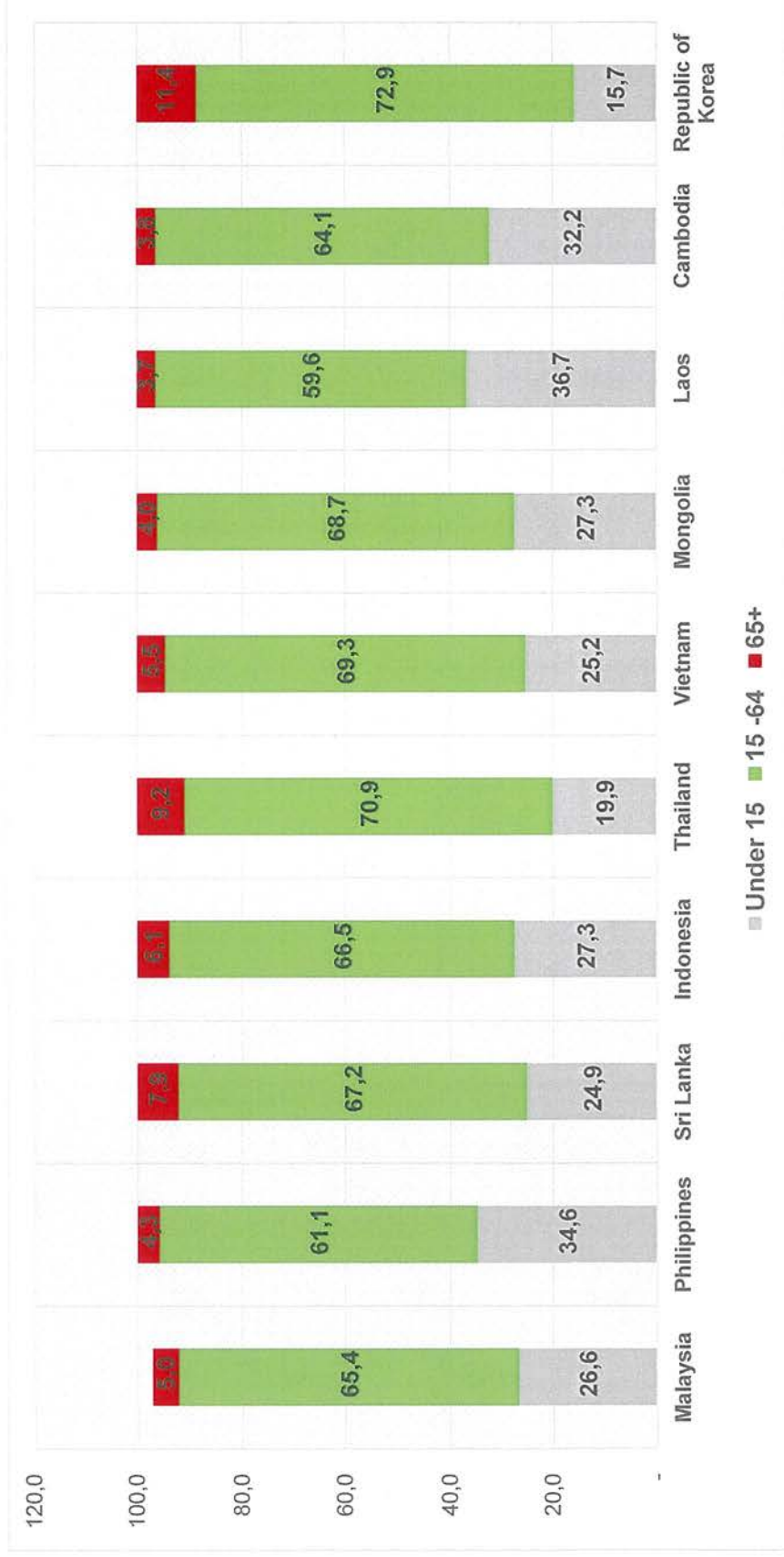
**AWCF AT A GLANCE**



**Asia has 60% of world population which dominated by productive age.**

# Demography Structure of AWCFC Countries

% POPULATION AS OF MAY 2017

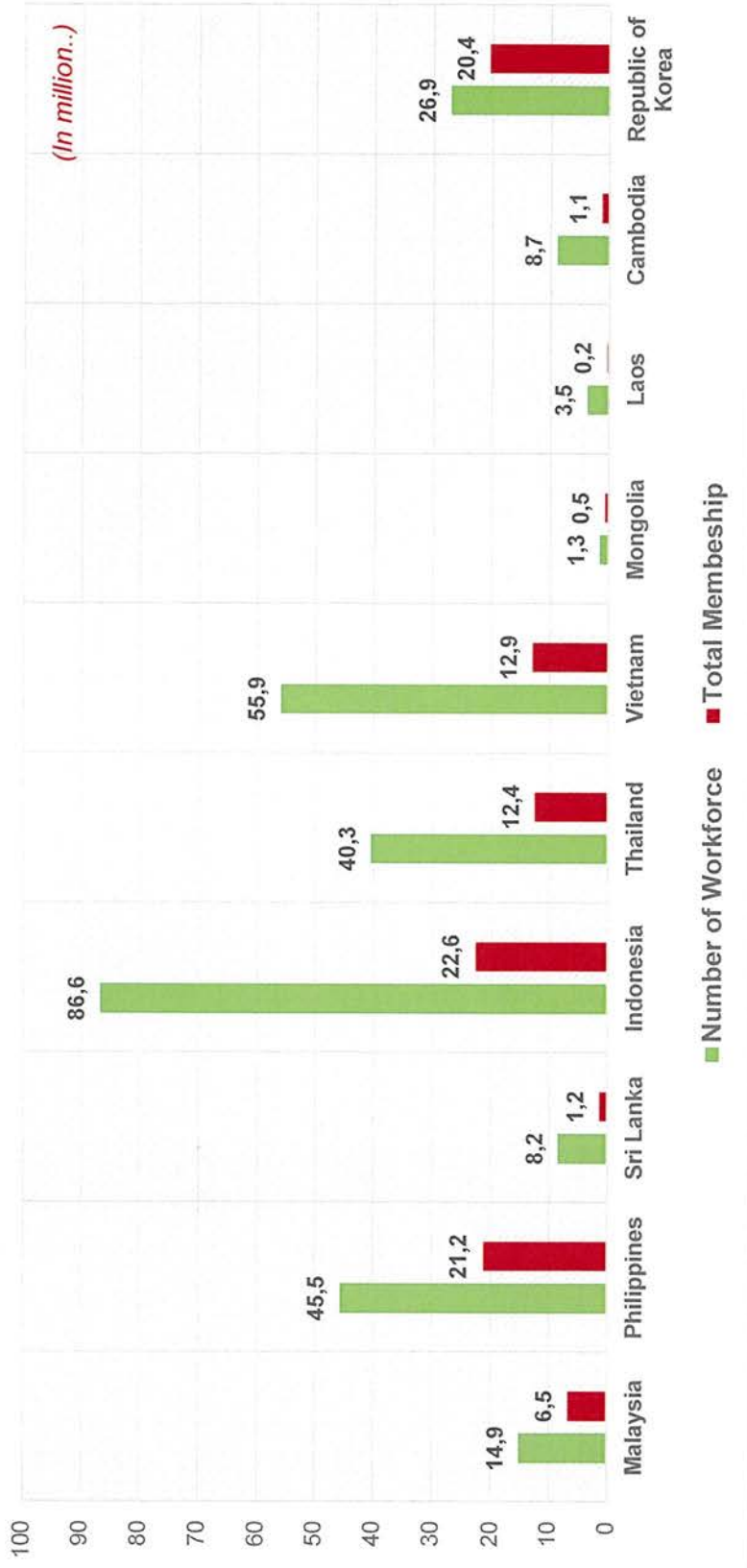


**AWCFC Countries are experiencing with bonus demography which are relatively dominated by young population.**



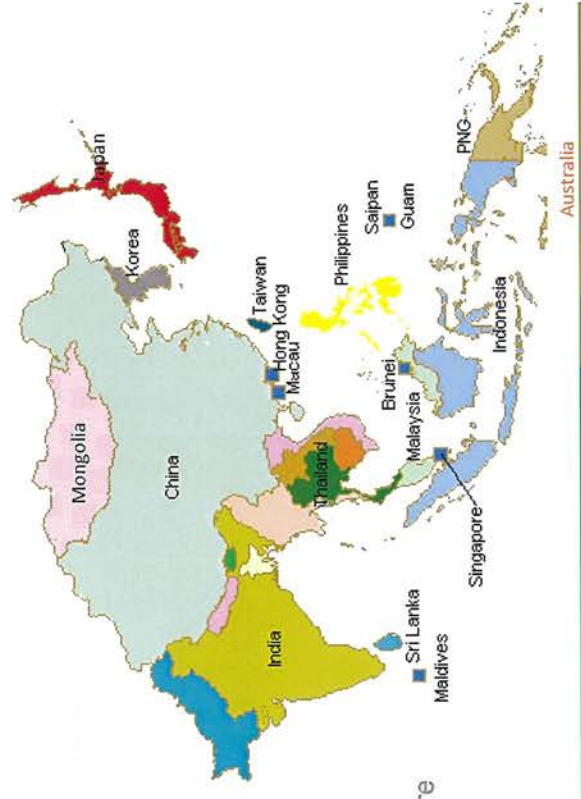
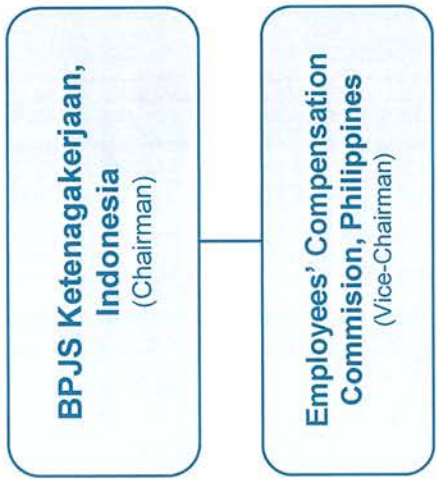
## Employment Injury Coverage Among AWCFC Countries

COVERAGE OF EMPLOYMENT INJURY PROGRAM  
AMONG AWCFC COUNTRIES IN 2016



**Coverage rate of employment injury scheme among AWCFC countries is 34%.  
Thus, membership expansion still the main challenge of AWCFC.**

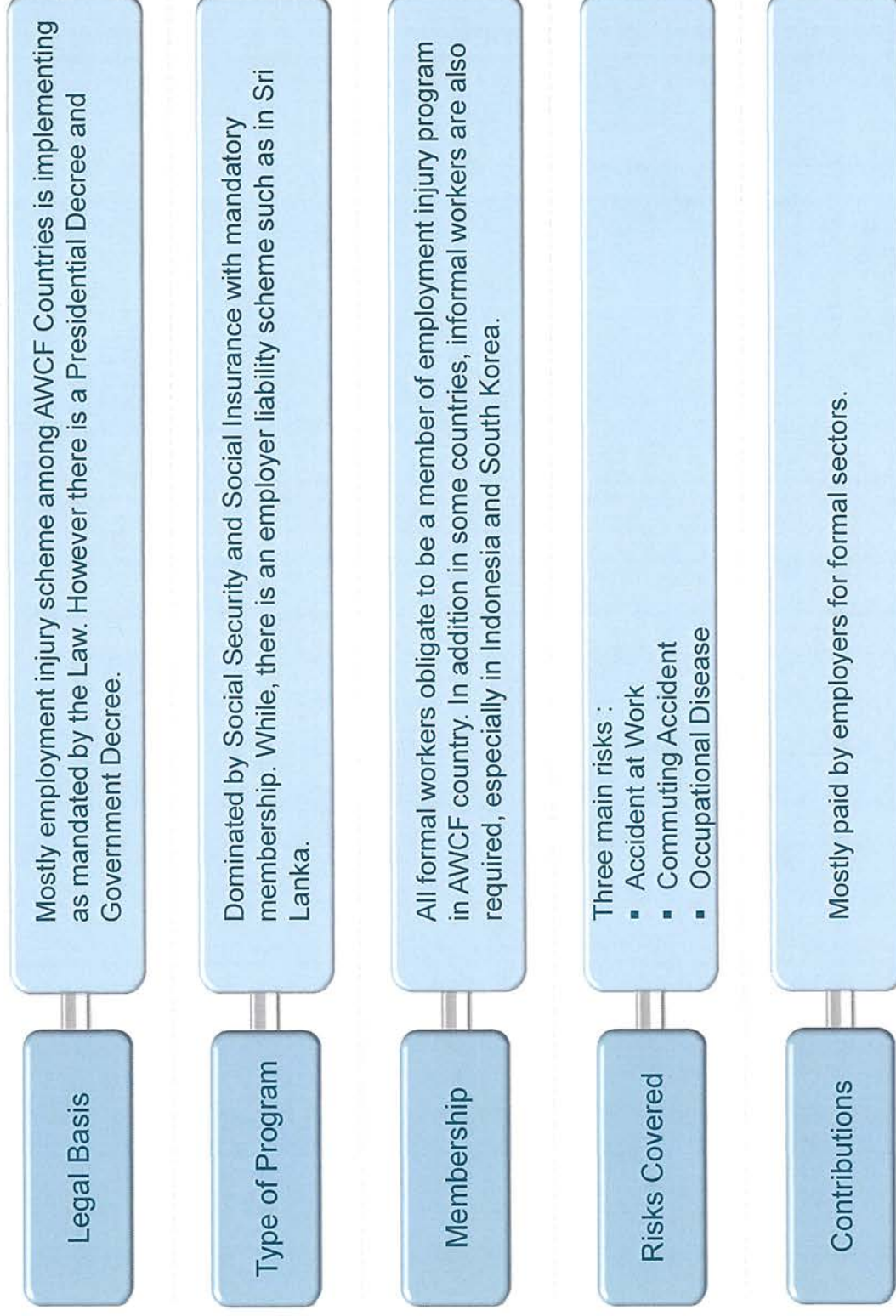
1.  Malaysia  Social Security Organization
2.  Philippines  Employees Compensation Commission
3.  Sri Lanka  Office of the Commissioner of Workmen's Compensation
4.  Indonesia  BPJS Ketenagakerjaan
5.  Thailand  Social Security Office
6.  Vietnam  Vietnam Social Security
7.  Sri Lanka  Department of Labour
8.  Mongolia  Social Insurance General Office
9.  Laos  Social Security Organization
10.  Laos  Ministry of Labour & Social Welfare
11.  Cambodia  National Social Security Fund
12.  Republic of Korea  Korean Workers' Compensation & Welfare Service
13.  Philippines  Social Security System



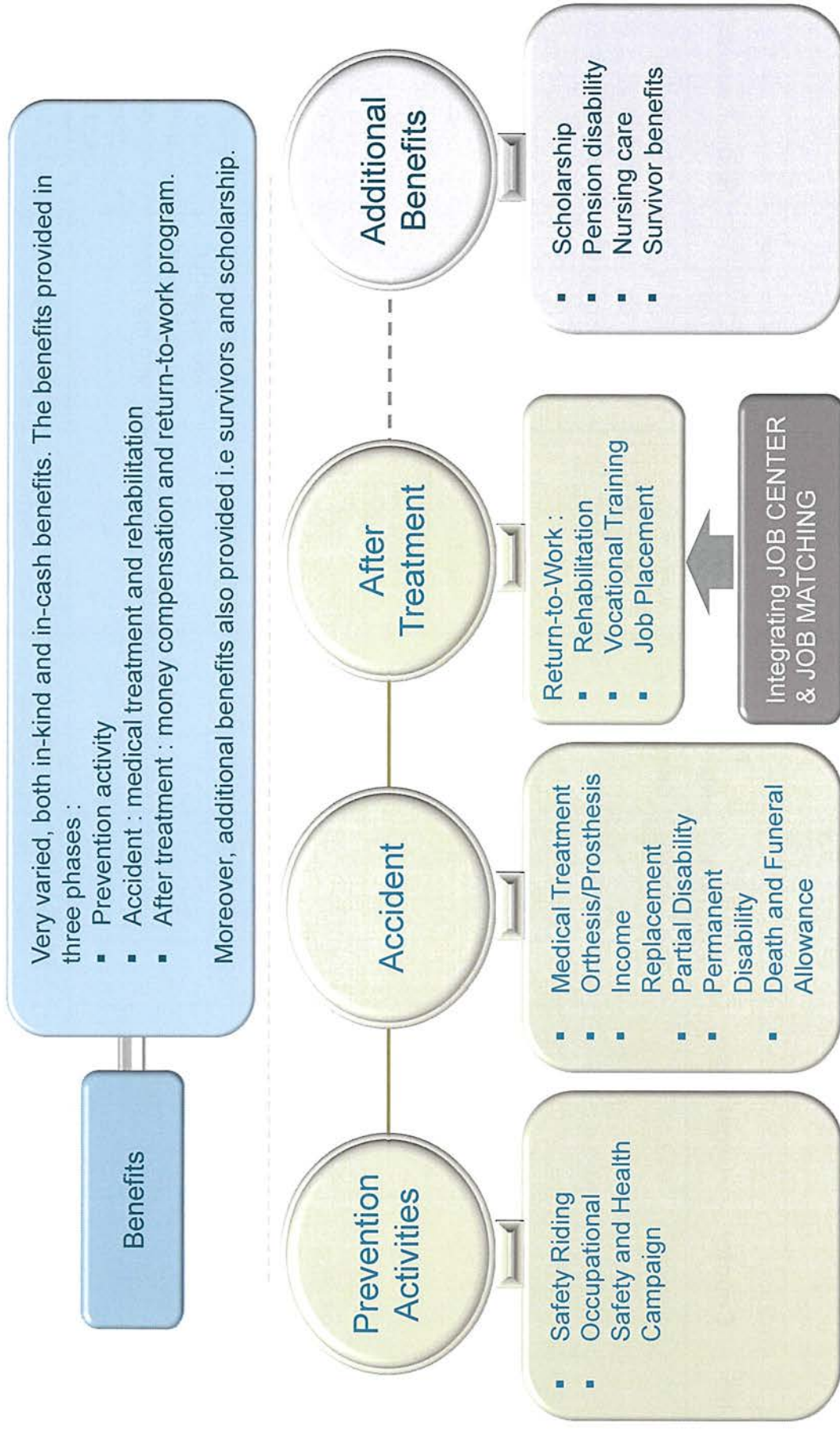
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# EMPLOYMENT INJURY PROGRAM AMONG AWCFC COUNTRIES

# Big Picture of Employment Injury Scheme



# Big Picture of Employment Injury Scheme



# Employment Injury Scheme

No	Country	Legal Basis	Type of Program	Type of Membership	Eligible Member	Contributions/ Premium	Risks Covered
1	Malaysia	By Law	Social Security	Compulsory	Workers. Excluded self employed and Public Servants	Employer only	<ul style="list-style-type: none"> <li>▪ Accident at work</li> <li>▪ Commuting Accident</li> <li>▪ Occupational disease</li> </ul>
2	Philippines	Presidential Decree	Social Security	Compulsory	<ul style="list-style-type: none"> <li>▪ Private Sector</li> <li>▪ Government Sector, Army and Police</li> </ul>	<ul style="list-style-type: none"> <li>▪ Government Budget</li> <li>▪ Employer</li> </ul>	<ul style="list-style-type: none"> <li>▪ Work-related sickness</li> <li>▪ Employment Injury</li> <li>▪ Death</li> </ul>
3	Sri Lanka	Workmen's Compensation Ordinance	Employer Liability System	Voluntary	Public and Private sector	Non-Contributory Basis	<ul style="list-style-type: none"> <li>▪ Accident at work</li> </ul>
4	Indonesia	By Law	Social Security	Compulsory	All workers	<ul style="list-style-type: none"> <li>▪ Employer for formal sector</li> <li>▪ Employee for informal sector</li> </ul>	<ul style="list-style-type: none"> <li>▪ Accident at work</li> <li>▪ Commuting Accident</li> <li>▪ Occupational disease</li> </ul>
5	Thailand	By Law	Social Security	Compulsory for private sector	Private sectors	Employer only	<ul style="list-style-type: none"> <li>▪ Accident at work</li> <li>▪ Occupational disease</li> </ul>

## Employment Injury Scheme

No	Country	Legal Basis	Type of Program	Type of Membership	Eligible Member	Contributions/ Premium	Risks Covered
6	Vietnam	By Law	Social Insurance	<ul style="list-style-type: none"> <li>Compulsory</li> <li>Voluntary</li> </ul>	<ul style="list-style-type: none"> <li>Employee with minimum 3 months contract.</li> <li>Civil servants</li> <li>Army</li> <li>Vietnam overseas workers</li> <li>Self employed (voluntary)</li> </ul>	<ul style="list-style-type: none"> <li>Employer</li> <li>Employee (voluntary)</li> </ul>	<ul style="list-style-type: none"> <li>Accident at work</li> <li>Commuting Accident</li> <li>Occupational disease</li> </ul>
7	Mongolia	By Law	Social Insurance	<ul style="list-style-type: none"> <li>Compulsory</li> <li>Voluntary</li> </ul>	<ul style="list-style-type: none"> <li>White collar and blue collar workers</li> <li>Self-employed person</li> </ul>	<ul style="list-style-type: none"> <li>Employers</li> <li>Self-employed person</li> </ul>	<ul style="list-style-type: none"> <li>Accident at work</li> <li>Commuting Accident</li> <li>Occupational disease</li> </ul>
8	Laos	Government Decree	Social Security	Compulsory	All workers working in the Employers with 10 or more workers	Employer only	<ul style="list-style-type: none"> <li>Accident at work</li> <li>Occupational disease</li> </ul>

No	Country	Legal Basis	Type of Program	Type of Membership	Eligible Member	Contributions/ Premium	Risks Covered
9	Cambodia	By Law	Social Security	Compulsory	Employee in private sector	Employer only	<ul style="list-style-type: none"> <li>▪ Accident at work</li> <li>▪ Commuting Accident</li> <li>▪ Occupational disease</li> </ul>
10	Republic of Korea	By Law	Social Security	Compulsory	All workers	Employer only	<ul style="list-style-type: none"> <li>▪ Accident at work</li> <li>▪ Occupational disease</li> </ul>



## Employment Injury Benefits (Disability Management – inkind benefits)

No	Country	Prevention Responsibilities	Medical Treatment	Orthosis/Prosthesis	Rehabilitation	Vocational Training	Job Placement
1	Malaysia	✓	✓	✓	✓	✓	✓
2	Philippines	✓ (Occupational Safety and Health Center)	✓	✓	✓	✓	✓
3	Sri Lanka	No	Health Insurance provided by Government	No	No	No	No
4	Indonesia	✓	✓	✓	✓	✓	✓
5	Thailand	✓ (Prevention Commission)	✓	✓	✓	✓	No
6	Vietnam	No	✓	✓	✓	No	No
7	Mongolia	✓	✓	✓	✓	No	No
8	Laos	No	✓	✓	✓	No	No
9	Cambodia	✓	✓	✓	✓	✓	No
10	Republic of Korea	✓ (Ministry of Labor)	✓	✓	✓	✓	✓

## Employment Injury Benefits (Compensation – in cash benefits)

No	Country	Transportation Cost	Income Replacement	Partial Disability	Permanent Disability	Death Allowance	Funeral Cost	Others
1	Malaysia	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> <li>▪ Scholarship for children</li> <li>▪ Survivors benefits</li> </ul>
2	Philippines	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> <li>▪ Disability pension (survivors)</li> </ul>
3	Sri Lanka	No	✓	✓	✓	No	✓	No
4	Indonesia	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> <li>▪ Scholarship for children</li> <li>▪ Disability pension (survivors)</li> </ul>
5	Thailand	No	✓	✓	✓	✓	✓	Survivors benefits
6	Vietnam	No	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> <li>▪ Survivors benefits</li> <li>▪ Care giver benefits</li> </ul>
7	Mongolia	No	No	✓	✓	No	✓	<ul style="list-style-type: none"> <li>▪ Disability pension (survivors)</li> </ul>

## Employment Injury Benefits (Compensation – in cash benefits)

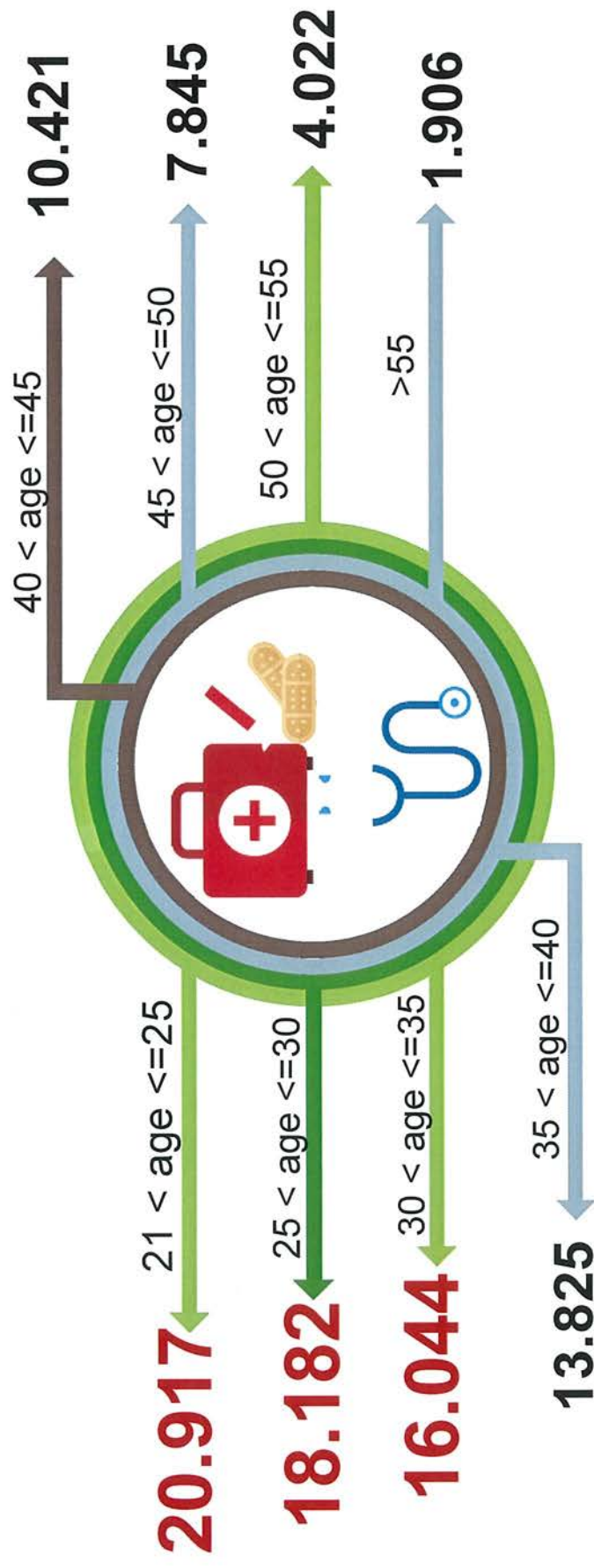
No	Country	Transportation Cost	Income Replacement	Partial Disability	Permanent Disability	Death Allowance	Funeral Cost	Others
8	Laos	No	√	√	√	√	√	<ul style="list-style-type: none"> <li>▪ Survivors benefits</li> <li>▪ Invalidity care giver benefits</li> </ul>
9	Cambodia	√	√	√	√	√	√	Survivors benefits
10	Republic of Korea	√	√	√	√	√	√	<ul style="list-style-type: none"> <li>▪ Survivors benefits</li> <li>▪ Nursing care Benefits</li> </ul>

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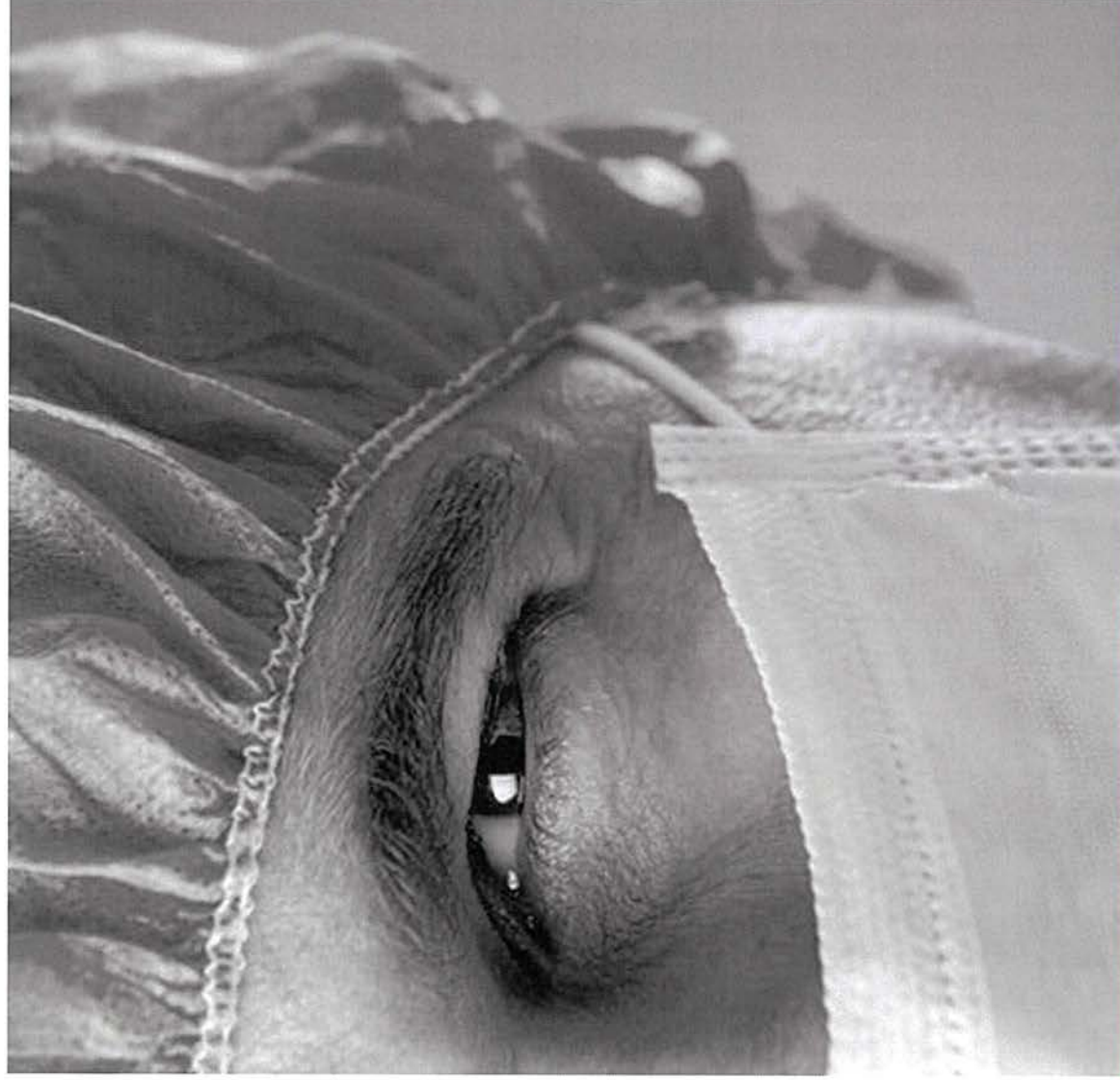
# EMPLOYMENT INJURY IN INDONESIA



Employment injuries mostly happen inside the working area. However, there is a huge number contributed by commuting accident.



Most cases occurred in productive age



## Employment Injury in Indonesia in 2016:

**255** cases a day

**15** out of handicapped

**6** out of death

**1** out of permanent  
total disability



## EMPLOYMENT INJURY BENEFIT (Act 44/2015)

**Formal Workers**  
(including Foreign Worker)

### Contribution

0.24% - 1.74% (depends on the  
business risks)

**InFormal Workers**

### Contribution

Nominal amount as  
calculated in table



## Benefits :

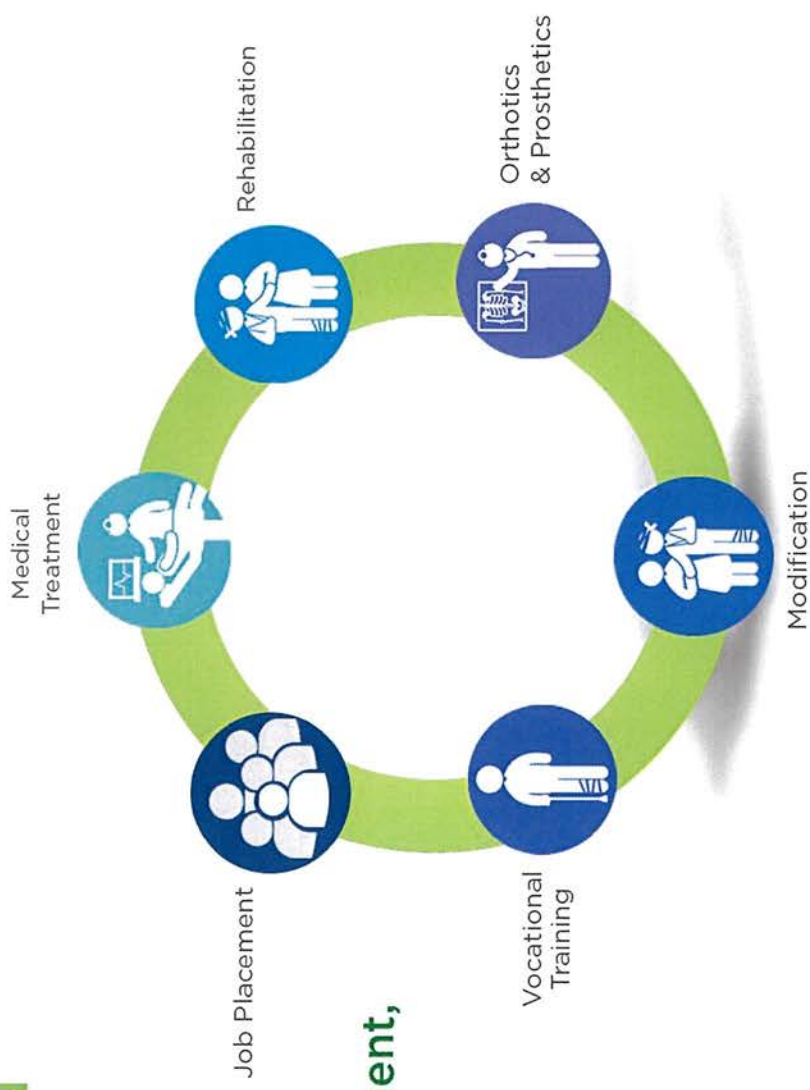
- a. Unlimited medical treatment.
- b. Allowance in cash :
  - Replacement cost of transporting : IDR 1-2,5 million.
  - Temporary not able to work :
    - ☐ 1st six month 100% monthly wages
    - ☐ 2nd six month 75% monthly wages
    - ☐ 3rd six month 50% monthly wages
  - Permanent disable : 56 x monthly wages.
  - Partial disable : % disability x % table x monthly salary.
  - Death benefits : 48 x monthly wages.
  - Funeral : IDR. 7,8 million.
- c. Scholarship for children IDR. 12 million for member who die or get permanent disabled.

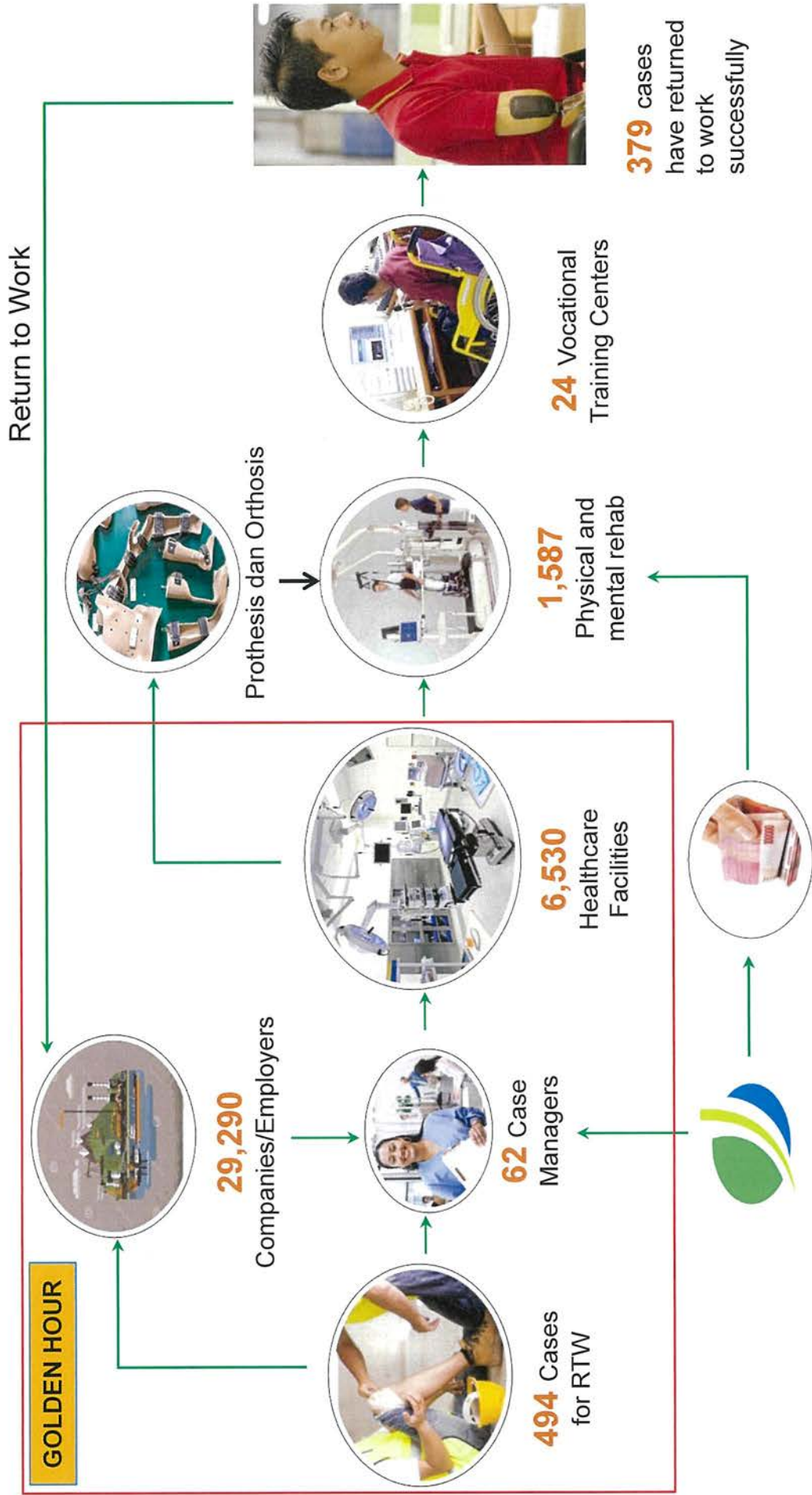




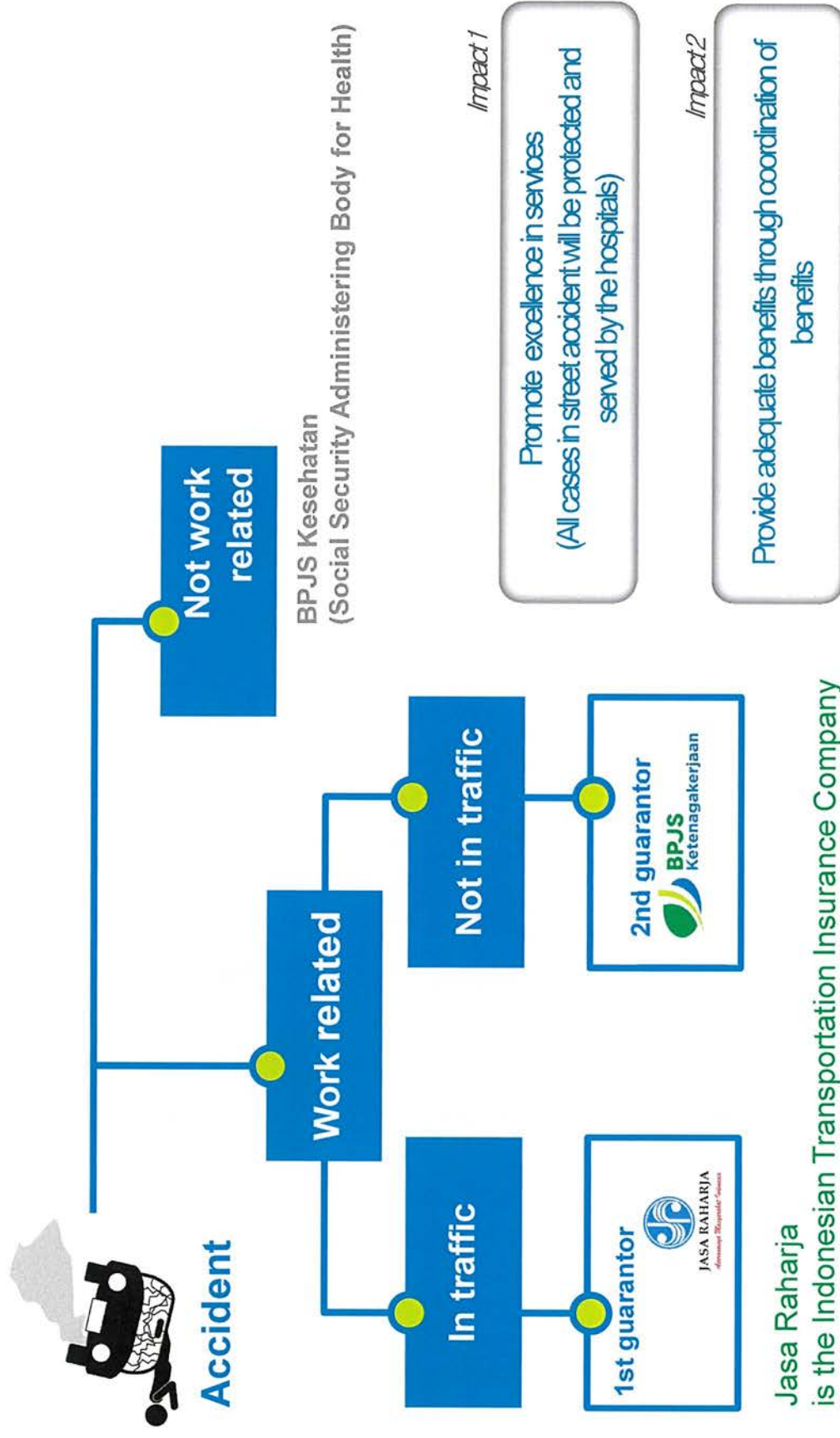
## THE CYCLE OF RETURN TO WORK PROGRAM

Integrated Benefit of :  
**Promotion, Prevention, Compensation, Medical treatment, Rehabilitation, Scholarship for the children and “return to work”**





# Coordination of Benefit to Anticipate Case of Street Accidents



Jasa Raharja is the Indonesian Transportation Insurance Company

## Safety Riding

Collaborating with relevant institutions, BPJS Ketenagakerjaan organized “Safety Riding” events for its members to promote traffic safety and to prevent its member from experiencing traffic accidents



## Safety Equipment



Facilitate safety equipments such as safety helmet, safety glove, glasses, earing plug to prevent injury and disease.

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# FUTURE DEVELOPMENT

## Proposal to Improve Employment Injury in AWCFC Countries



Encourage homogeneous scheme and benefits regarding the implementation of program schemes and benefits of workers compensation in the Asian region.

- Establish standar guideline
- Joint research

To strengthen the capacity of the social security institution.

- Joint training or seminar
- Knowledge exchange program
- Certification on disability management

Building advanced benefits of return-to-work.

- Integrating Job Center
- Incentive to employer for zero accident or for supporting return-to-work

*“Social security is not just an ideology but an inherent lifestyle”*  
(Agus Susanto)



**As a bridge towards  
workers' welfare**

**Thank You**

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# **Workers' Compensation Agency Profiles**

International Association of Industrial Accident  
Boards and Commissions

2013 Edition

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# Introduction

The International Association of Industrial Accident Boards and Commissions is pleased to release the 2013 edition of *Workers' Compensation Agency Profiles*. Since workers' compensation is regulated at the state-level in the U.S., workers' compensation agencies, policies, and procedures can vary widely across the country. This publication serves as a tool to compare how workers' compensation agencies are organized and operated. The document also provides links to additional jurisdictional resources that may be of interest to users. In the future, the IAIABC hopes to expand this publication to include workers' compensation agencies outside of the U.S.

This publication provides similar information to that contained in the U.S. Department of Labor's *State Workers' Compensation Administration Profiles* which ceased publication in 2005. Information presented here was compiled from a variety of public sources. All jurisdictions were given the opportunity to review and revise their profiles. At the time of publication, the IAIABC had not received updated profiles from Maine, Nevada, New Hampshire, North Carolina, Oregon, South Carolina, Utah, Vermont, and Wyoming.

The IAIABC would like to especially thank the agency staff that assisted the IAIABC in reviewing and updating their jurisdiction's profile. We look forward to working closely with jurisdictions to keep information updated and useful.

We welcome comments, feedback, and updates on this publication; please submit them to Keri Lore, IAIABC Education and Resource Coordinator, at [kllore@iaiaabc.org](mailto:kllore@iaiaabc.org).



SCHEDULE OF WIRO MEETINGS WITH SIRA

2015/18

Date	Details
7/01/16	Meeting with SIRA
7/04/16	Meeting with SIRA
8/07/16	Meeting with SIRA
13/07/16	Meeting with ICNSW & SIRA
25/07/16	Meeting with SIRA - Legal costs in Work Capacity Decisions Reviews
8/09/16	<b>SIRA Consultation meeting</b>
15/11/16	Meeting with SIRA - s.39 issues
16/12/16	Attend SIRA PIAWE forum
17/01/17	Meeting with ICNSW & SIRA
10/02/17	Meeting with SIRA - s.39 issues
13/03/17	Meeting with SIRA - s.39 issues
5/04/17	<b>SIRA Consultation meeting</b>
17/05/17	DFSI Dispute Resolution Reference Group - Meeting with Minister
6/07/17	Meeting of DFSI Dispute Resolution Reference Group
23/08/17	Meeting of DFSI Dispute Resolution Reference Group
18/09/17	Meeting of DFSI Dispute Resolution Reference Group
5/10/17	Meeting of DFSI Dispute Resolution Reference Group
1/11/17	Meeting of DFSI Dispute Resolution Reference Group
6/11/17	Meeting of DFSI Dispute Resolution Reference Group
21/11/17	SIRA/WCC/WIRO/icare meeting - s.39 updates
5/12/17	SIRA/WCC/WIRO/icare meeting - s.39 updates
19/12/17	SIRA/WCC/WIRO/icare meeting - s.39 updates
23/01/18	SIRA/WCC/WIRO/icare meeting - s.39 updates
12/02/18	Meeting of DFSI Dispute Resolution Reference Group
10/04/18	SIRA/WCC/WIRO/icare meeting - s.39 updates
15/06/18	DFSI Dispute Resolution Steering Committee
28/06/18	SIRA/WCC/WIRO/icare meeting - s.39 updates
29/06/18	DFSI Dispute Resolution Steering Committee





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www.wiro.nsw.gov.au

## CURRENT IMPORTANT ISSUES IN THE WORKERS COMPENSATION SCHEME

4 May 2017

### [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

