



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

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

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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 brief introduction to the 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).

I will provide a copy of this 352 page report by hand separately.

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.

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- [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.

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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,



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17 August 2018