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Review Office

# **IRO Regional Seminars**

## **Ballina**

May 2022

# **IRO acknowledges traditional owners**



*We acknowledge the Bundjalung People as the Traditional Custodians of the land we are meeting on today, and part of the oldest surviving continuous culture in the world. We recognise their continuing connection to Country and thank them for protecting this land and its ecosystems since time immemorial.*

*We pay our respects to Elders past and present, and extend that respect to all First Nations people present today*



## Agenda

- IRO Update
- Solutions
- ILARS
- Schedule 5 inquiries
- Substantive Law Update – review of recent decisions under section 60 *Workers Compensation Act 1987*
- Questions



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# IRO Update

**Simon Cohen**

Independent Review Officer

## **IRO Update**

- Establishing the Independent Review Office under Schedule 5 of the *Personal Injury Commission Act 2020* from 1 March 2021
- Focusing on the needs of those using IRO services
  - External Assessment of IRO services
  - IRO Direction
  - Business Process Review
  - User Experience Survey
  - ILARS Review 2022

## **Schedule 5 to the PIC Act**

- IRO established by Schedule 5 to PIC Act
- Deals with complaints about insurers under WC and MAI legislation
- Administers the Independent Legal Assistance and Review Service
- Inquires into matters arising in connection with the operation of enabling legislation

## **Establishing the IRO**

- Commenced from 1 March 2021
- Key changes include:
  - IRO as a separate public sector agency
  - Range of new reporting and governance requirements
  - New Complaints Handling Protocol
  - Revised ILARS Guidelines



## **External Assessment of IRO Services**

- Conducted by Nous Group and reported in September 2020
- Assessed services against benchmarks of accessibility, efficiency, effectiveness, fairness and accountability
- Found stakeholders value IRO services and our expert team
- Recommended improvements:
  - to increase our impact in improving the WC system
  - to increase our engagement with workers, lawyers and others
  - to continuously improve the quality of our work
  - to improve our business processes.





## **IRO Direction 2020-22**

- Responds to PIC Act and Nous Assessment
- Establishes our Mission:  
*The IRO helps persons who are injured at work or in motor accidents and insurers find fair solutions to complaints and claims, and recommends improvements to the statutory compensation schemes for workers compensation and motor accident injuries.*
- Sets our Priorities
  - Early solutions
  - Improving the WC System
  - Wellbeing and development of IRO team
  - Efficient and Effective IRO operations
- Success measures: user satisfaction; high performance; staff engagement.

## Key projects to improve IRO services UX program



- User Experience (UX) project
- Responds to Nous Assessment recommendation
- Baseline measurement of experience of those who use our services
  - Injured persons with Solutions – understanding; communication; responsiveness; focus on solutions; **expertise**; fairness
  - Insurers with Solutions: communication; responsiveness; consistency; **expertise**; transparency; focus on solutions
  - Approved Lawyers with ILARS – efficiency; **expertise**; effectiveness; consistency
  - Injured workers with Approved Lawyers – **expertise**; clarity; honesty; responsiveness; focus on solutions.





## Key projects to improve IRO services

### Business Process Review

- Review of all Solutions and ILARS business processes
- Problem: Internal processes have been added to over time; more complex; lot of manual work; not always fit for purpose
- Goals: Right first time; reduced manual effort to administer cases; more transparent case management
- Benefits: Consistency; responsiveness; efficiency; staff satisfaction
- Improvements:
  - More templates/improved workflows (*consistency/efficiency*)
  - Increased automation (e.g., web forms; AL portal) (*responsiveness/efficiency*)
  - Systems integration (*responsiveness/efficiency*)



## **Key projects to improve IRO services**

### **ILARS Review 2022**

- ILARS established in 2012 and as IRO statutory function in 2021
- First comprehensive review since establishment
- Key questions:
  - How well does ILARS meet statutory purpose?
  - How effectively does ILARS promote WC system objectives?
- Expert Review Committee
- Cross-sector Reference Group
- Issues paper in May 2022
- Final Report in October 2022



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# Overview of IRO Solutions

**Jeffrey Gabriel**  
Director Solutions

## **IRO Complaints Overview**

- 1 March 2021 – 28 February 2022:
  - 6995 WC complaints
  - 866 CTP complaints
- Most common workers compensation issues
  - Delay in determining liability – 28%
  - Delay in payments – 22%
- WC complaints. We resolve about 85% of matters with a benefit (payments or reimbursement); Action (E.g. change rehab provider or cancel IME); or information (e.g. explaining an insurer's position)
- 97% of complaints finalised within 15 calendar days

## **All About Solutions**

- Local Stats: 1 March 2021 – 28 February 2022
- North Coast + Queensland – 459 complaints + 359 enquiries across both jurisdictions
- Likely greater numbers. For one-third of complainants, we do not have their residential addresses.



## **Solicitors and Complaints**

- In around 60% of IRO complaints – the injured person's first referral to our office was from a solicitor
- We can add value and resolve side issues while you proceed with substantive case
- For example, IRO can ask deal with a complaint about a missing travel reimbursement while you move on with preparing application to Commission
- Insurers often respond to IRO faster than they respond to lawyers





## What's New In Solutions

- **The IRO Complaint Handling Protocol**
  - Defines how and which matters we deal with
  - Consultation with industry participant.
  - Complaints outcome seeking response that is “fair and reasonable”
  - What complaints we may not deal with?
  - Matters the subject of the PIC
  - Where no attempt to resolve with insurer





## IRO Investigations

- More substantial method of dealing with complaints
- Can lead to publication of reports with recommendations
  - Case Study – Investigation
    - After IRO complaint, insurer says worker is owed \$40k.
    - Soon after they write back to say error and demand reimbursement within 2 days.
    - IRO investigation
    - Insurer could not substantiate overpayment
      - Annual Leave, Matching Payslips, Excel Override
      - Standard of Practice 23
  - Requirement to pay back was waived



## **IRO Early Solutions**

- Specifically called put in PIC Act
- No Response to Claim (NRTC)
- TIP: If NRTC – carefully check timelines and check with insurer before seeking Stage 3 funding
- Case Study
- Other early solutions

## What IRO Values in a Complaint

- A good chronology
- Evidence of trying to resolve things with the insurer
- A paper trail. E.g. the email evidencing a request was made
- A suggested solution or solutions that you seek
  - (Remember - IRO cannot adjudicate disputes)

## How Complaints Add Value

### MOU with SIRA

- Operationalising PIC Act provision for information sharing
- Periodic reports
- Notification of significant matters
- Case Study – CTP Notifications Aug 2021 – Jan 2022
  - 14 Regulatory Notices
  - 4 Remediation Plans
  - 4 Referrals to Enforcement and Prosecutions

## How Complaints Add Value

### Meetings with Icare

- To discuss observations and drive improvement
- Case Study – Section 38A payments and *Hee*
  - IRO complaint about indexation
  - Identified possible Section 38A entitlement
  - Questions asked of Icare about broader claims
  - 136 claims across NI and TMF. Payments around \$3m



## **How Complaints Add Value**

### **Meetings with CTP Insurers**

- To establish a relationship and report observations
- Case study – back pay after PIC decisions on non-minor injuries.  
(This case was referred to us by a solicitor)



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# Overview of ILARS

**Simon Cohen**

Independent Review Officer





## **All About ILARS**

- ILARS by the numbers – key statistics
- ILARS Funding Guidelines – 2021 Reforms
- Applications and invoices – tips and tricks



# Grant Management

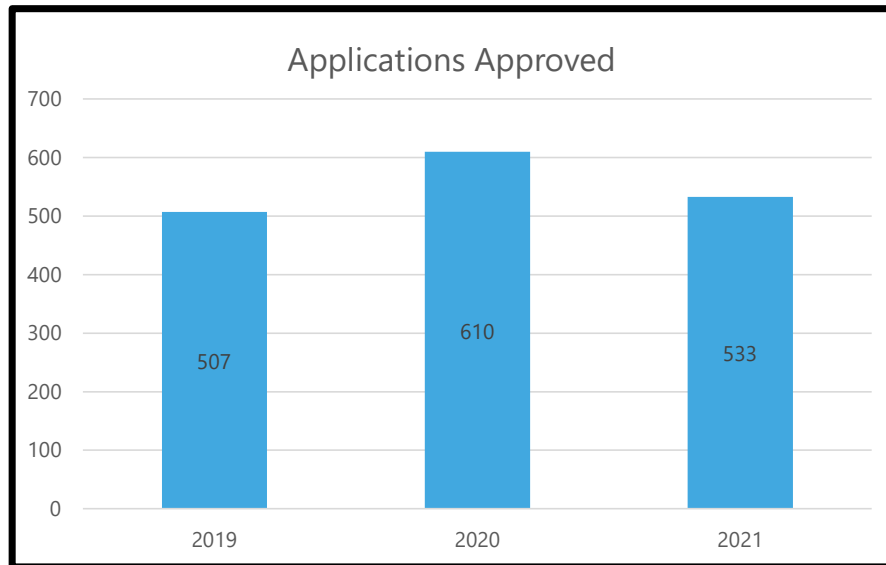
## Grants Management - Applications Received Jan 21 - Dec 21

	All Firms
Applications Received Jan 21 to Dec 21	20,639
Received Grants Approved Jan 21 to Dec 21	20,587
Received Grants Declined Jan 21 to Dec 21	52
Average Days to Approve Grants Jan 21 to Dec 21	4
% of Grants Approved Jan 21 to Dec 21	99.7%
Requisitions Raised Jan 21 to Dec 21 Grants	1,639
% of Approved Grants with a requisition raised	8%
Average No. of Requisitions Per Approved Lawyer	3.0



# Applications Approved

## North Coast and Queensland

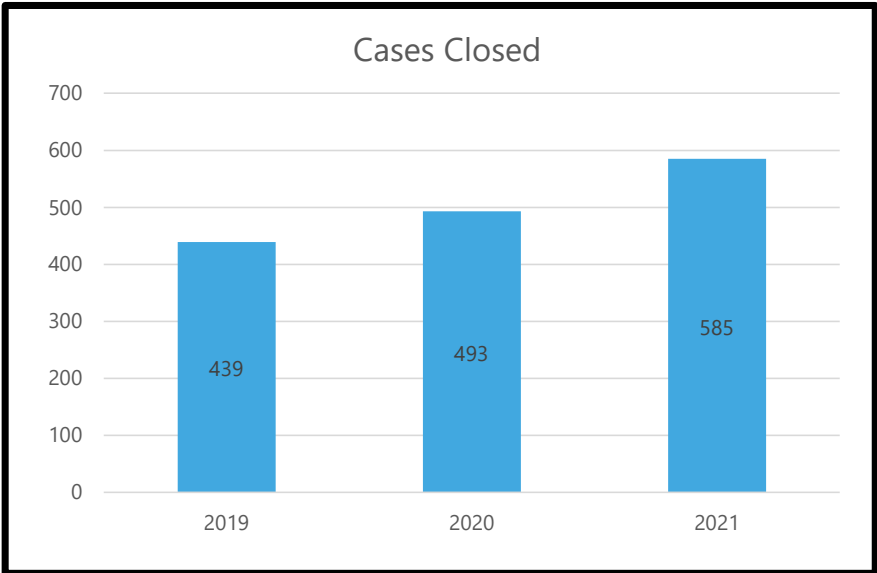


## All Firms

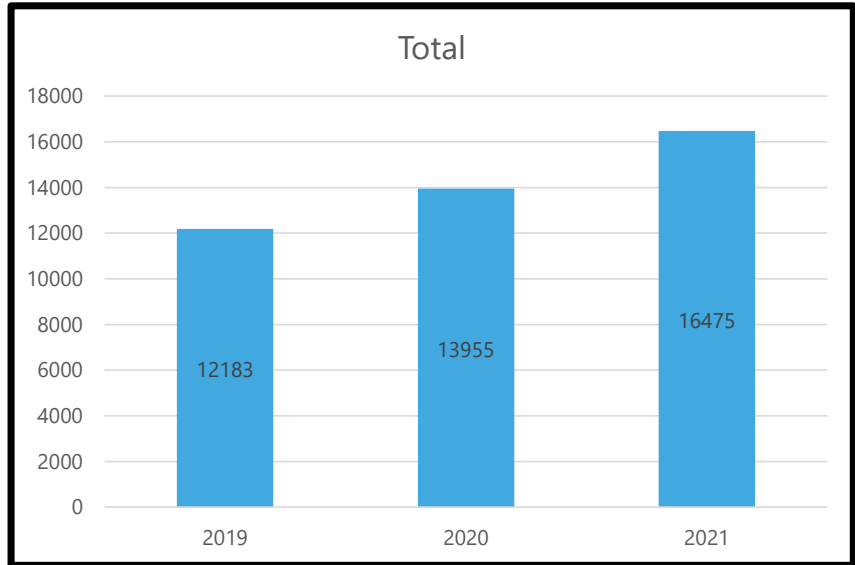


# Closed Cases

## North Coast and Queensland



## All Firms



## Duration of Grants Closed

		Less than 3 mths	3 to 6 mths	6 to 12 mths	12 to 18 mths	18 to 24 mths	24 to 36 months	Over 36 months	Grand Total
Hunter and Central Coast	2019	8%	14%	28%	18%	11%	12%	8%	410
	2020	13%	14%	29%	17%	10%	10%	7%	472
	2021	9%	17%	30%	20%	13%	7%	4%	552
All Firms	2019	8%	13%	31%	20%	11%	9%	7%	11,376
	2020	18%	15%	29%	16%	8%	8%	6%	13,066
	2021	9%	19%	31%	18%	10%	8%	5%	15,377



# Region

Top 10 Regions for law firms	Psychiatric and psychological disorders					Grand Total
	Hearing	Lower extremity	The spine	Upper extremity		
Eastern Suburbs	1	12	34	5	12	64
Hunter	263	72	79	74	96	<b>584</b>
Illawarra	3	11	24	22	18	78
Inner West	570	8	3	10	8	<b>599</b>
Liverpool/Fairfield	1	9	12	14	14	50
North Coast	23	218	330	342	261	<b>1174</b>
Parramatta	80	41	54	70	55	<b>300</b>
Queensland	2	18	39	41	37	137
Sydney City	27	181	312	292	294	<b>1106</b>
Western Sydney		5	11	13	18	<b>47</b>
<b>Grand Total</b>	<b>970</b>	<b>575</b>	<b>898</b>	<b>883</b>	<b>813</b>	<b>4139</b>
Percent of matters in North Coast and Queensland Regions	<b>2%</b>	<b>38%</b>	<b>37%</b>	<b>39%</b>	<b>32%</b>	<b>28%</b>
Excluding Hearing Loss						<b>41%</b>



## Closed case outcomes from January 19 to December 21


Summary Outcome	Final Outcome		No Final Outcome		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
<b>All Firms</b>						
Commission or Court	11322	46%	435	2%	11757	27%
Other Outcome	175	1%	13072	72%	13247	31%
Pre-Proceedings	13162	53%	44	0%	13206	31%
Advice Only	0	0%	4632	25%	4632	11%
<b>Grand Total</b>	<b>24659</b>	<b>100%</b>	<b>18183</b>	<b>100%</b>	<b>42842</b>	<b>100%</b>
<b>Percentage</b>	<b>58%</b>		<b>42%</b>			
<b>North Coast and Queensland</b>						
Commission or Court	485	58%	18	3%	503	33%
Other Outcome	6	1%	494	72%	500	33%
Pre-Proceedings	341	41%	2	0%	343	23%
Advice only		0%	171	25%	171	11%
<b>Grand Total</b>	<b>832</b>	<b>100%</b>	<b>685</b>	<b>100%</b>	<b>1517</b>	<b>100%</b>
<b>Percentage</b>	<b>55%</b>		<b>45%</b>			

## Funding Guidelines – 2021 reforms

- > ILARS Funding Guidelines largely unchanged since 2019
- > *Multiple funding applications for the same worker* – ask client if previous lawyer; speak to IRO
- > *Stage 2 funding – ‘having some merit’* - be specific about the dispute or claim and why it has merit
- > *Review of funding decisions* – ask IRO for reasons for decision; if seeking a review provide reasons and specify the outcome sought

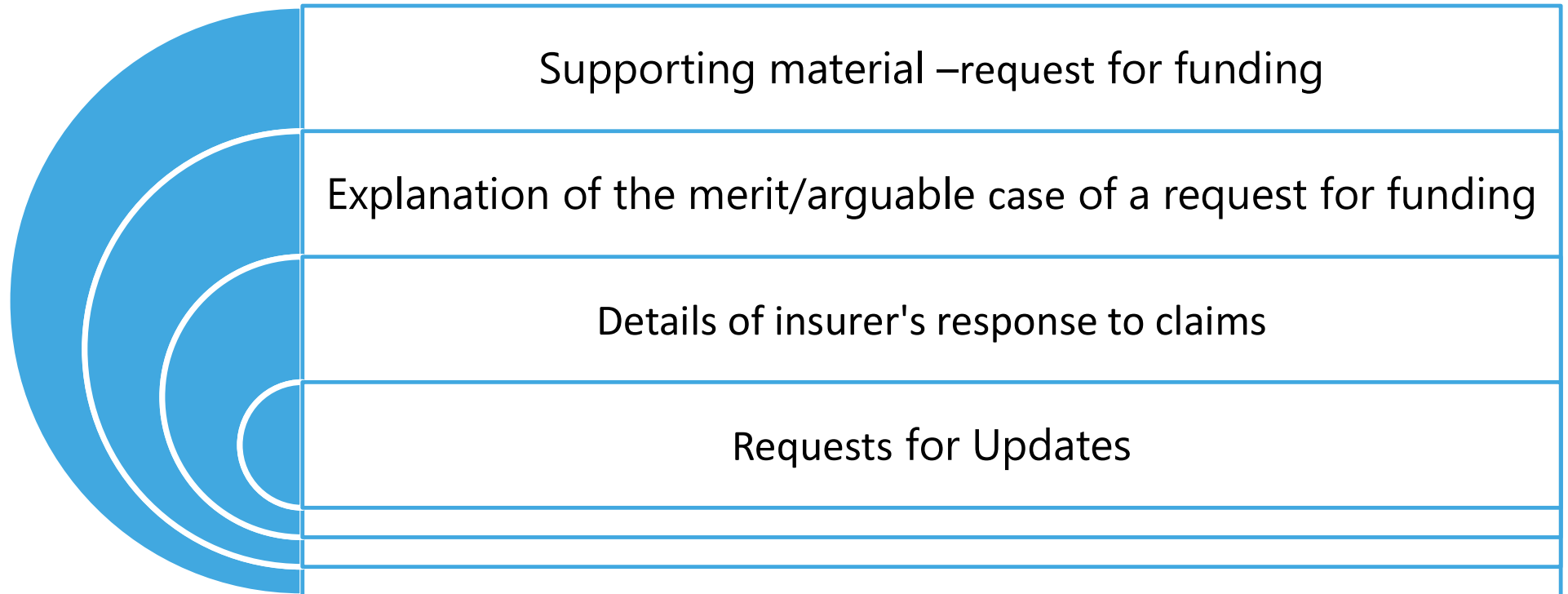


# Applications

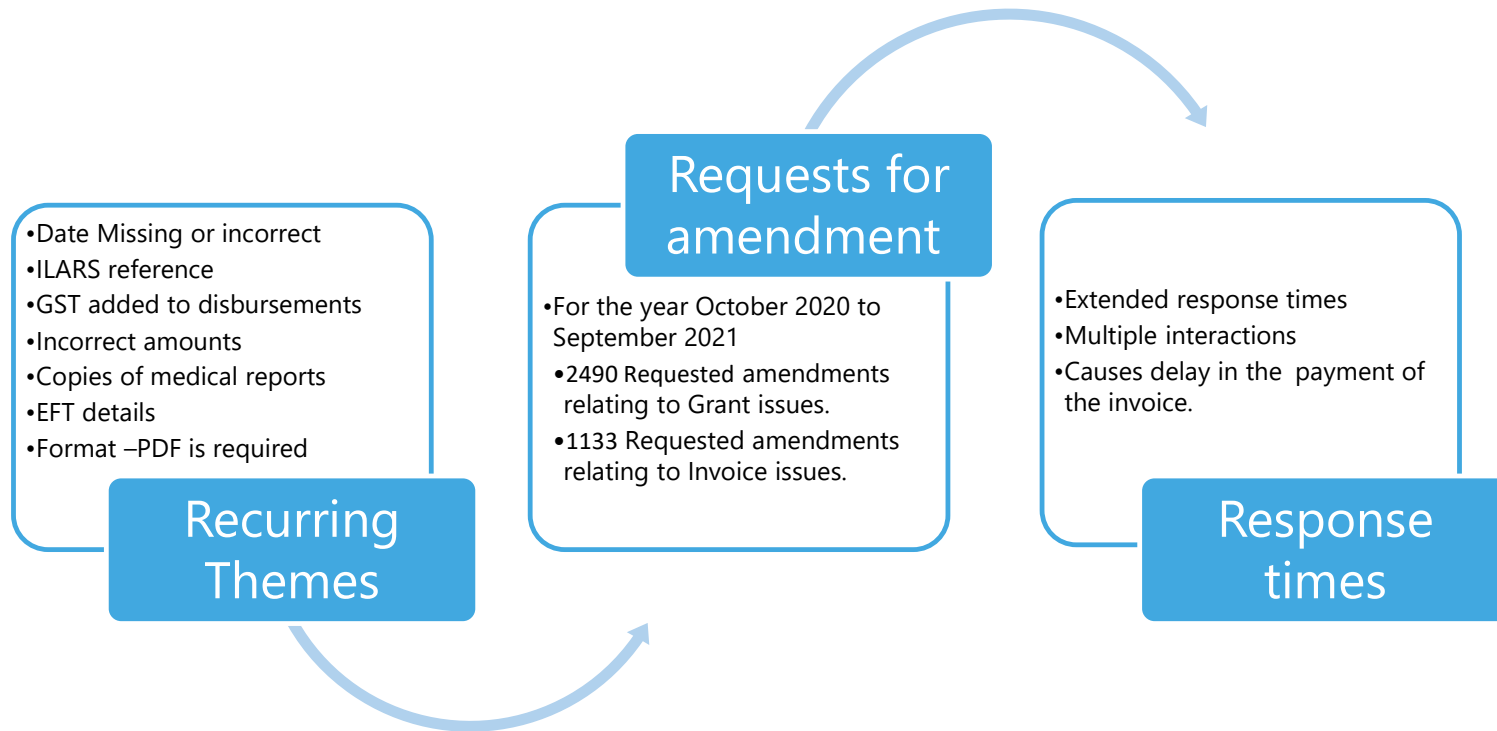


Duplicate Applications – 642 DA outcomes 2019-2021
Applications Consolidated with other grant - 626 CA outcomes 2019 -2021
Accurate details in application for funding
Attaching PDF's, not links
Correct ILARS reference in the subject line

# Applications



# Invoices





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# Schedule 5 Inquiries

**Simon Cohen**

Independent Review Officer

## **Schedule 5 inquiries**

- IRO system improvement actions
- Schedule 5 of the PIC Act – inquiry power
- Recent and current inquiries
  - Delays in determining liability
  - Practical operation of section 59A WCA
  - Errors in weekly payments
- Other system improvement actions



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# **Substantive Law Update**

**Review of recent decisions under s 60 WCA**

**Jeffrey Gabriel**

Director, Solutions



## **Relevant decisions**

Shipp v Community First Development Ltd t/as Indigenous Community Volunteers [2021] NSWPIC 2

Bliss v State of NSW (Illawarra Shoalhaven Local Health District) [2021] NSWPIC 269

Summers v Sydney International Container Terminals Pty Limited t/as Hutchison Ports [2021] NSWPICPD 35

Honarvar v Professional Painting AU Pty Ltd [2022] NSWPICPD 12 - 31/03/2022



## **Diab v NRMA Ltd [2014] NSWCCPD 72 – Roche DP**



Re-stated the test for "*reasonably necessary*" as set out by Burke CCJ in *Rose v Health Commission (NSW) (1986) 2 NSWCCR 32*:

- The treatment's purpose and potential effect is to alleviate the consequences of the injury.
- The Court must conclude, exercising prudence and sound judgment and good sense, that it is "reasonably necessary". This involves the Court deciding on the facts as found that the treatment is essential to, should be afforded to, and should not be forborne by the worker.
- 3. The Court will have regard to medical opinion about the treatment's relevance & appropriateness, any available alternatives, cost and its actual or potential effectiveness and its place in the usual medical armoury of treatments for the particular condition.



## **Shipp v Community First Development Ltd t/as Indigenous Community Volunteers - [2021] NSWPIC 2**



- Member Beilby - 4/03/2021
- Applied the decisions in *Rose* and *Diab* .
- Held: Bariatric surgery was reasonably necessary medical and related treatment for a worker who suffered a lumbar spine injury and required further spinal surgery.



## **Bliss v State of NSW (Illawarra Shoalhaven Local Health District) [2021] NSWPIC 269**

Member Snell - 2/08/2021

Held that medical cannabis is reasonably necessary treatment for a 2013 back injury.

- The insurer disputed the claim because the worker used marijuana pre-injury and failed to disclose this to the doctors.
- Applied the decisions in *Rose* and *Diab*.
- Failure to disclose prior use was not fatal to the claim. While it reduced the weight given to the doctors' opinions, the evidence as a whole indicates that use alleviates pain, assists in reducing long-term reliance on opioids and improves day-to-day-functioning and mental health.





## **Summers v Sydney International Container Terminals Pty Limited t/as Hutchison Ports [2021] NSWPICPD 35**

President Phillips DCJ – 4/11/2021

Was neck surgery reasonably necessary treatment for a 2019 injury?

- Applied *Diab*.
- Held that the Member made findings about the medical evidence that were not supported by the evidence.
- While the PIC is a specialised Tribunal and is able to draw inferences, it can only interpret or draw inferences from existing evidence and not create evidence.





## **Summers v Sydney International Container Terminals Pty Limited t/as Hutchison Ports [2021] NSWPICPD 35**

- All doctors diagnosed pathologies from the C4 to C7 levels but disagreed about which was the most serious.
- The Member was required to grapple with this issue but failed to do so.
- As a result, the Member was not able to properly construe the medical evidence, which was to the effect that the proposed surgery was reasonably necessary.



## **Honarvar v Professional Painting AU Pty Ltd [2022] NSWPCPD 12**

Deputy President Snell – 31/03/2022

- Right ankle injury (requiring multiple surgeries) and soft tissue injuries to the lumbar and cervical spines. Appellant he had extensive conservative treatment including psychological treatment.
- He sought approval for L5/S1 fusion surgery and an orthopaedic bed & mattress (\$33,700).
- The insurer disputed the claims & the appellant sought a declaration under s 60(5) WCA.



## Honarvar v Professional Painting AU Pty Ltd

Member Wynyard entered an award for the respondent & held:

- there was no evidence about the failure of conservative treatments and that the appellant's mental state was probably preventing his recovery.
- both Dr Sheehy and Dr Carmody suggested that pain management was more appropriate than surgery.
- the mattress and bed were recommended to aid recovery from the surgery, but as the surgery claim failed these items were not '*curative apparatus*' within the meaning of s 59 WCA.

The appellant appealed on 12 grounds.

Snell DP allowed the appeal & made a declaration under s 60(5).

## Honarvar v Professional Painting AU Pty Ltd

- He applied the decisions in *Diab* and *Rose*.
- He found that the Member did not provide sufficient reasons about why the appellant's self-assessment as to the effectiveness of the alternative treatments did not assist him;
- The Member made factual findings that were not open on the evidence, including that:
  - the evidence about the effectiveness of alternative treatment principally came from the appellant;
  - the doctors recommended surgery because nothing else worked;
  - there was no evidence from practitioners who provided the alternative treatments; and
  - the proposed surgery would not result in any significant improvement or associated functional gains.

## Honarvar v Professional Painting AU Pty Ltd

- He found that:
- the amount claimed for the mattress and base was clearly an error (this was reduced by \$30,000 on appeal).
- the mattress and base are '*curative apparatus*' for the purposes of s 59(e) *WCA*, as
  - they could be fairly described as a '*mechanical contrivance*'; &
  - they have '*therapeutic qualities*' and are used to achieve a particular medical purpose, as the treating surgeon made clear.
- The Member effectively ignored the treating practitioners' evidence.



## Final Points

- The case law indicates that the PIC has adopted a consistent evidence-based approach to determining s 60 disputes by applying the test in *Diab* and *Rose*.
- The insurer is required to make a soundly-based decision when disputing a claim under s 60.
- In order to challenge a s 60 dispute, the onus is on the worker to provide the Member with a sound basis for finding that the disputed treatment is reasonably necessary.
- Therefore, the evidence relied upon must address the relevant criteria.
- Subjective evidence from the injured worker alone will not be sufficient.

# QUESTIONS