



Independent
Review Office

IRO Approved Lawyer and Paralegal training course

December 2022



Independent
Review Office

Introduction to the Independent Legal Assistance and Review Service (ILARS)

Presenters

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WIRO Funding Policy replaced by ILARS Funding Guidelines



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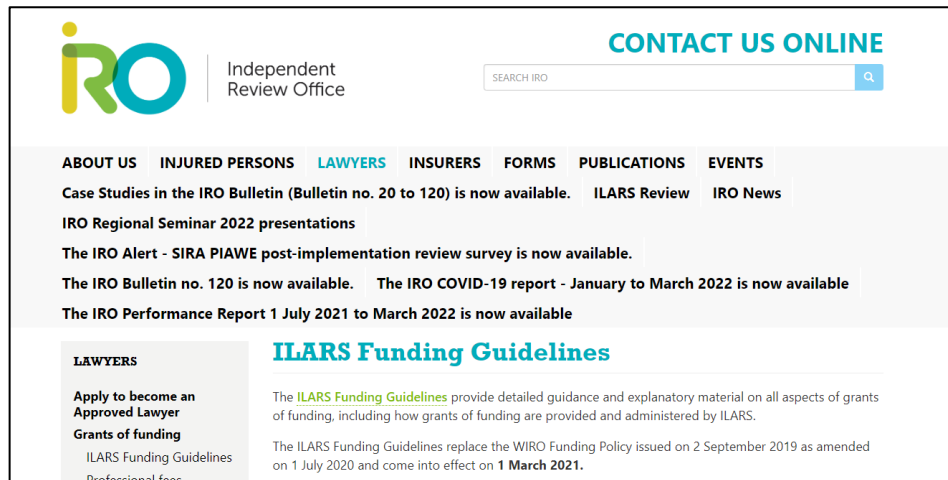
- > The *WIRO Funding Policy* was **replaced by** the *ILARS Funding Guidelines* on **1 March 2021**

ILARS Funding Guidelines

- > The ILARS Funding Guidelines have the status of a **secondary legislative instrument** under Sch 5 to the *Personal Injury Commission Act 2020* (**PIC Act**)
- > Any new or amended Guidelines must be tabled in Parliament and may be subject to disallowance

ILARS Funding Guidelines (cont.)

- > The Funding Guidelines are available on the IRO website and the NSW Legislation website:



The screenshot shows the IRO website header with the logo and 'Independent Review Office' text. A search bar is present with the text 'SEARCH IRO'. The navigation menu includes 'ABOUT US', 'INJURED PERSONS', 'LAWYERS', 'INSURERS', 'FORMS', 'PUBLICATIONS', and 'EVENTS'. Below the menu, there are several news items: 'Case Studies in the IRO Bulletin (Bulletin no. 20 to 120) is now available.', 'ILARS Review', 'IRO News', 'IRO Regional Seminar 2022 presentations', 'The IRO Alert - SIRA PIAWE post-implementation review survey is now available.', 'The IRO Bulletin no. 120 is now available.', 'The IRO COVID-19 report - January to March 2022 is now available', and 'The IRO Performance Report 1 July 2021 to March 2022 is now available'. The 'LAWYERS' section is highlighted, and the 'ILARS Funding Guidelines' page is selected. The page content includes a sub-section 'LAWYERS' with links for 'Apply to become an Approved Lawyer', 'Grants of funding', 'ILARS Funding Guidelines', and 'Professional fees'. The main heading is 'ILARS Funding Guidelines'. The text states: 'The ILARS Funding Guidelines provide detailed guidance and explanatory material on all aspects of grants of funding, including how grants of funding are provided and administered by ILARS. The ILARS Funding Guidelines replace the WIRO Funding Policy issued on 2 September 2019 as amended on 1 July 2020 and come into effect on 1 March 2021.'

- > The Funding Guidelines are based on a **presumption in favour of** funding

ILARS Funding Guidelines (cont.)

- > ILARS funds **eligible workers** for statutory benefits as set out in clause 1.5 of the Funding Guidelines
- > **Exempt workers** include police officers, firefighters, paramedics, coal miners, workers suffering a dust disease and workers subject to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*
- > IRO **does not fund** work injury damages claims

ILARS Funding Guidelines (cont.)

- > The IRO has a broad discretion in relation to funding
- > We look to support **early and cost-effective** resolution of disagreements
- > The Funding Guidelines are to be used as a **guide**
 - The Guidelines are designed to retain some **flexibility** to enable the IRO **to respond to differing circumstances appropriately**

What is funded?

- > Part 6 of the Funding Guidelines ('*Grant amounts*') sets out what is funded, and at what stage of a matter (resolution events and amounts payable)

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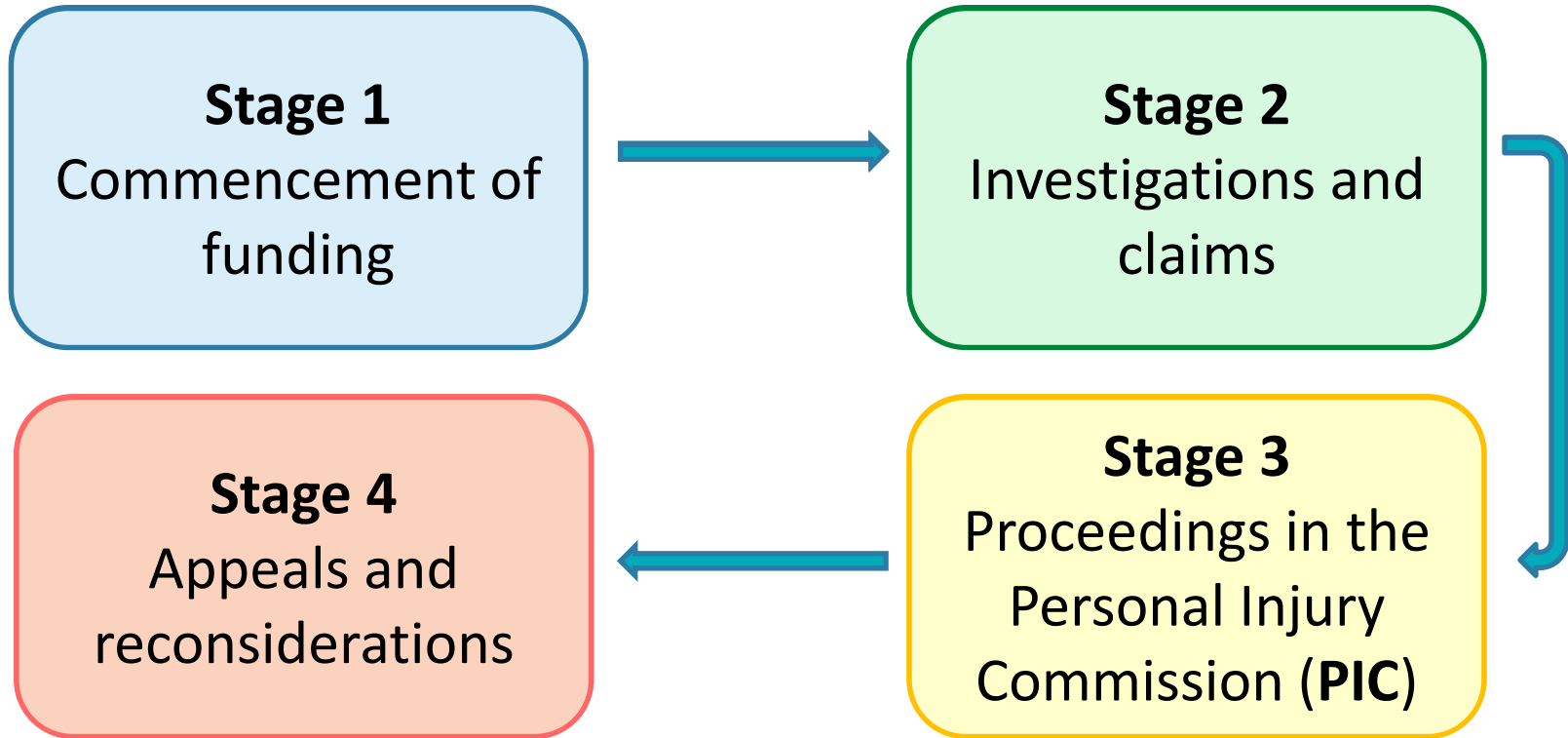
What is funded (cont.)?



- > Funding **may be granted for**:
 - Professional fees (Approved Lawyer (**AL**) fees)
 - Counsel's fees
 - Medical report fees
 - Cost of other disbursements
 - Incidental expenses reasonably necessary to investigate or pursue a dispute about a claim



Funding stages



Federal jurisdiction matters



- > From **1 July 2022**, we have applied a new **federal jurisdiction funding policy** for matters affected by federal jurisdiction
- > The new policy is available on the IRO website and sets out the principles that apply to ILARS grant funding in federal jurisdiction matters

ABOUT US INJURED PERSONS **LAWYERS** INSURERS FORMS PUBLICATIONS EVENTS

Case Studies in the IRO Bulletin (Bulletin no. 20 to 120) is now available. ILARS Review IRO News

IRO Regional Seminar 2022 presentations

The IRO Alert - SIRA PIAWE post-implementation review survey is now available.

The IRO Bulletin no. 120 is now available. The IRO COVID-19 report - January to March 2022 is now available

The IRO Performance Report 1 July 2021 to March 2022 is now available

LAWYERS

Apply to become an Approved Lawyer

Grants of funding

ILARS Funding Guidelines

Professional fees

Forms

Application for a grant of

Federal jurisdiction funding policy

The IRO has finalised a new **Federal Jurisdiction Funding Policy (the Policy)**, which commences on 1 July 2022. The Policy applies to Independent Legal Assistance and Review Service (ILARS) funding for matters affected by federal jurisdiction (where the worker resides outside NSW and the other party is the State of NSW, or a natural person). The Policy is consistent with ILARS' statutory purpose to:

'provide funding for legal and associated costs for workers under the Workers Compensation Acts seeking advice regarding decisions of insurers for those Acts and to provide assistance in finding solutions for disputes between workers and insurers.'



Federal jurisdiction matters (cont.)



- > Principles applicable to federal jurisdiction matters include (paraphrased):
 - The *Federal Jurisdiction matters - Professional Fees and Disbursement Schedule* generally applies **instead of** items 3.1 to 4.4 of the Professional Fees Schedule in Part 6 of the Funding Guidelines
 - Legal advice and assistance to the worker should be at no cost to them
 - Costs are payable for matters resolved on basis of payment of statutory benefits only
 - IRO may seek a refund of legal costs or part of costs paid under a grant where a worker recovers costs in the District Court, per para 2.15 of the Funding Guidelines
 - IRO retains an overarching discretion re professional fees paid and reimbursement of disbursements, per paras 4.1.3, 4.1.6 and 4.2.2.1 of the Funding Guidelines



Federal jurisdiction matters (cont.)



- > Principles applicable to federal jurisdiction matters include (paraphrased):
 - > IRO generally does not indemnify a worker where a costs order is made in favour of a Respondent/Defendant by the Court, per para 3.4.5.1 of the Funding Guidelines
 - > IRO will consider meeting some or all costs where such an order is made, on a case-by-case basis, and after considering all the circumstances of the matter.
 - > ALs requesting that IRO meet these costs must provide a written submission, attaching any relevant information and addressing why IRO should meet the costs order
 - > IRO will pay fees at the conclusion of the legal relationship, or when a final outcome is achieved, per para 4.1.1 of the Funding Guidelines
 - > Interim invoices may be considered in special circumstances per para 4.3.3 of the Funding Guidelines.



Professional fees and Counsel's fees

- > Legal advice
- > Investigate and assert a worker's rights
- > Explore early resolution
- > Determination in the PIC
- > Pursue appeals, both within the PIC and to higher Courts where appropriate

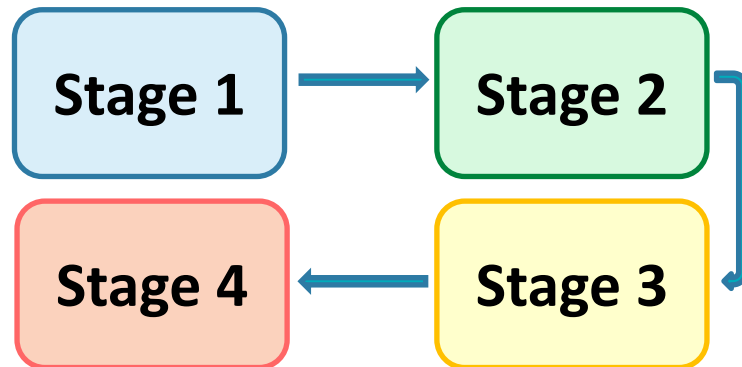


Disbursements

- > Required to be '**reasonably necessary**' to conduct investigations, obtain evidence, or incur expenses to progress a claim or matter
- > Generally, pre-approval is not required for first medicolegal (independent medical examination (**IME**)) report; clause 4.2.2

Extensions of funding requests

- > Applications for extensions are needed to **move between Stages** of funding



- > Seeking an extension satisfies the obligation to **keep IRO informed**

Extensions of funding requests (cont.)



- > Extension applications are required in order to be considered for payment of legal fees at the conclusion of a claim or resolution of a dispute
- > Essential part of grant process, to ensure matters are resolved at the earliest opportunity
- > Ensures that requirements of the PIC or legislation are met before steps are taken to enter into formal dispute resolution



Stage 1 – Preliminary legal advice

- > Allows an AL to establish a client-lawyer relationship and determine whether they can provide assistance to eligible workers
- > **Not available** for hearing loss claims
- > ALs can obtain clinical notes without pre-approval
- > Includes gathering of **some evidence**
- > **Comprehensive legal advice** is expected to be given to an injured worker who retains you

Stage 2 – Investigations and claims

- > Allows for investigation of the worker's claim
- > Can be granted initially, or after a **request for an extension** post Stage 1
- > To progress from Stage 1 to Stage 2, the extension application must demonstrate **some merit**; clause 3.2.3
- > Stage 2 contemplates further work, involving the obtaining of evidence in support of the claim and/or the making of the claim on the insurer

Stage 3 – Proceedings in the PIC

- > Stage 3 is available where the resolution of the dispute **requires** the **intervention of the PIC**
- > ALs can seek Stage 3 funding initially or after Stage 2 investigations where they have attempted to resolve the claim with the insurer but have been **unsuccessful**
- > ALs are required to demonstrate that there is an **arguable case**; clause 3.3.2

Stage 4 – Appeals and reconsiderations

- > Extension of funding **must be sought** for an appeal
- > Worker initiated Medical Appeal Panel (**MAP**) appeals are **conditionally funded**; clause 3.4.4
- > Funding is **not available** for counsel's advice regarding prospects of appealing a medical assessment certificate (**MAC**)

Stage 4 – Appeals and reconsiderations (cont.)

- > Where the **worker is the appellant, conditional funding is generally available**
 - Full funding may be made available in some circumstances
- > Counsel's advice to support full funding is available; clause 3.4.4.1
- > Where the **worker is the respondent, full funding is available**
- > Where a reconsideration application is a precursor to the appeal, the reconsideration is funded on the same terms as the appeal
- > If the reconsideration is a stand alone application by the worker, conditional funding will be provided (otherwise full funding is available if the worker is the respondent)

Reviews of funding decisions



- > If the AL is dissatisfied with a funding decision, they can seek a **review** of the decision
 - > First level review is undertaken by **Director ILARS**
 - > If an AL is still dissatisfied, **final review** of the Director ILARS's decision is undertaken the **Independent Review Officer**



- > Submissions for review must comply with **section 2.12** of the **ILARS Funding Guidelines**
- > A review may be made on **any decision** made during the life of a grant (e.g. decision to decline Stage 1, Stage 2 or Stage 3 funding, or the costs assessed in the grant)

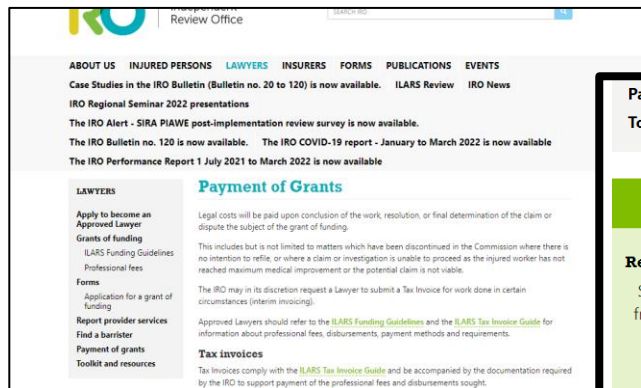


Tax invoices

- > A tax invoice should only be issued for **legal costs** (professional fees and disbursements) when work under the Grant is **concluded**
 - Interim invoices can be paid in certain circumstances with Director ILARS approval; clause 4.3.3
- > Part 6 of the ILARS Funding Guideline provides detail on amounts payable for outcomes achieved
- > GST of 10% is **only added** to **professional fees**, not disbursements
 - Counsel's fees are considered as **disbursements (no GST)**

Getting your invoice right

- > Tax invoices should **comply** with the [ILARS Tax Invoice Guide](#) which is available on the IRO website



**Payment of grants
Toolkit and resources**

Sign up

Receive updates from IRO
Stay up to date with news from IRO by subscribing to our publications

Sign Up

Tax invoices

Tax Invoices comply with the [ILARS Tax Invoice Guide](#) and be accompanied by the documentation required by the IRO to support payment of the professional fees and disbursements sought.

Disbursements claimed in a Tax Invoice must be itemised separately and must not include GST.

The Lawyer's Tax Invoice must be provided as a stand-alone pdf document. Where received in any other format, the Tax Invoice will be returned to the Lawyer to export to pdf.

Where possible, all disbursements claimed must be supported by an invoice or receipt provided or bundled separately to the Tax Invoice.

Payment of **interim invoices** for legal costs submitted prior to the conclusion of a funded matter will be considered in exceptional circumstances, such as where an Approved Lawyer experiences extreme financial hardship or where there have been significant delays in the resolution of a claim or dispute.

Payment of an approved Tax Invoice will be made by the IRO in accordance with IRO's terms of business, currently thirty (30) days.

Enquiries about payments will not be addressed until six (6) weeks after the date of an approved Tax Invoice.

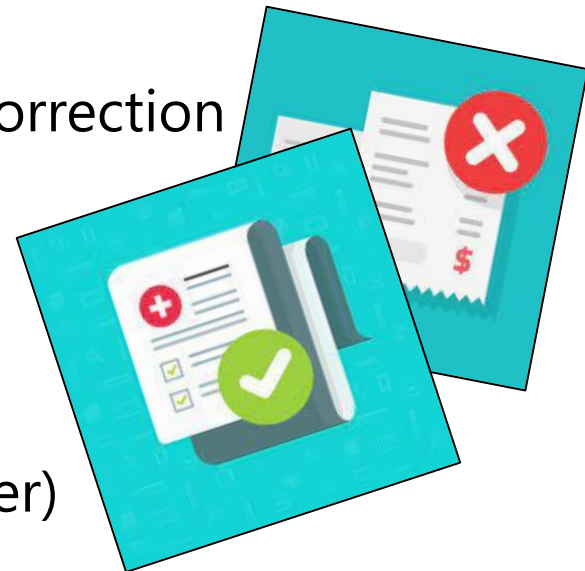
Getting your invoice right (cont.)

- > Tax invoices should:
 - use the **law firm letterhead**
 - clearly include the **firm's business details** (**ABN** is important)
 - include the same **bank details** as those **provided to IRO** for payment purposes
- > Any **changes** to bank details should be communicated to IRO through the appropriate channels



Payment of legal costs

- > Payment can only be made on receipt of a **compliant tax invoice**
- > Incorrect tax invoices will be returned for correction
 - > Correction should be made ASAP, corrected invoice **re-dated** with the **date of re-submission**
- > Payment generally **within 30 days** of the date of receipt of a correct invoice (or earlier)



Disbursement categories

- > **Travel** to medicolegal appointments
- > **Counsel's fees**
- > **Interpreter fees**
- > Pre-approval generally not required
 - Second and supplementary reports require pre-approval
- > Be mindful of **Fee Orders** (fixed by State Insurance Regulatory Authority (**SIRA**)) and Part 6 Grant Amount guide

Complexity Increase

- > Criteria are set out in clause 4.1.6 for ALs and clause 5.2.6 for counsel

4.1.6 Complexity increases

Where a Lawyer considers that the professional fees allowed are inadequate the IRO will consider an increase in professional fees on application by the Lawyer.

An increase in professional fees will **only** be considered where:

- a matter has involved significant additional work due to complex issues
- there are multiple respondents, or
- there are multiple resolutions within the same proceedings or matter.

A request for an increase should be made at the conclusion of the matter **prior to the preparation of a Tax Invoice**.

The Lawyer should provide reasons in support of the increase sought identifying the complexities and any additional work undertaken.

Any increase in professional fees is at the discretion of the IRO.

5.2.6 Complexity increases

The IRO will consider an increase of counsel's fees in exceptional circumstances where a matter has involved significant additional work due to the complexity of the issues or matters not considered in the **Disbursements Schedule**.

To support a request for an increase of counsel's fees, Lawyers should provide a short, signed submission from counsel in support of the requested increase at the conclusion of the matter. Any request for an increase and the supporting submissions should be provided to the ILARS Principal Lawyer for approval *prior to the issuing of a tax invoice*.

- > **Not** a substitute for a disagreement with a costs decision
- > **Cannot** be used to make up for costs apportioned out either by agreement or decision of the Principal Lawyer
- > Complexity increases for **federal jurisdiction matters** are based on the Attorney General's rates for legal representation

Working *smarter* not *harder*

- > Help us to fund you
- > Get your tax invoices right **first time**
- > Clearly identify category of report
- > Include **ILARS Grant Number** in all communications
- > Clearly set out what you need (e.g. extension of funding, report) in email subject lines
- > Provide pdf documents not links; IRO cannot access links due to cyber security policy
- > Set out why case has merit/is arguable
- > Early provision of relevant information makes for a more efficient experience for **everybody**



ILARS Group contacts

- > Fiona Seaton
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Introduction to the Solutions Group: enquiries and complaints handling

Burcu Yaroglu, Principal Lawyer Solutions Group

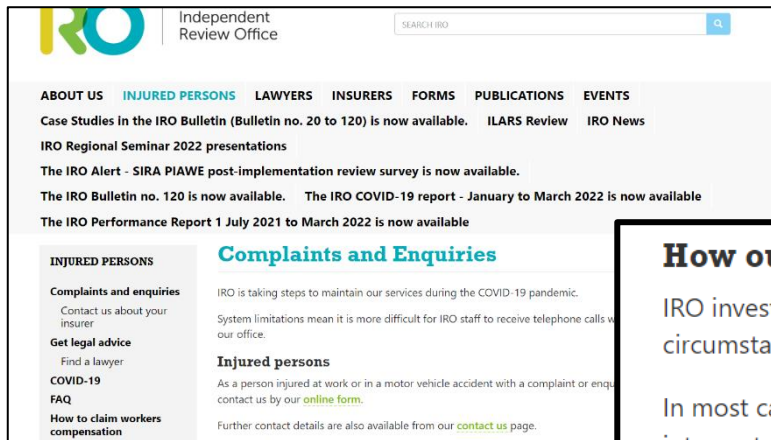
IRO Solutions Group

- > The IRO Solutions Group exercises the following statutory functions of the IRO:
 - Receiving and responding to **enquiries**
 - Receiving and responding to **complaints**
 - **Escalating** complaints
 - Conducting **investigations**
 - Seeking **early solutions**



IRO Complaint Handling Protocol

- > Complaints are handled in accordance with the **IRO Complaint Handling Protocol** available on the IRO website



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How our service works

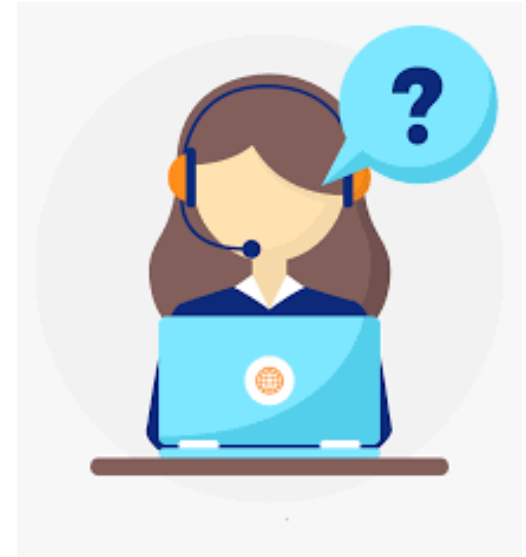
IRO investigates complaints fairly by listening to both sides of the story and reviewing the facts and circumstances.

In most cases, we will solve the issue through negotiation or simply clearing up confusion with the interpretation of the legislation.

For further details about the processes IRO employs to deal with complaints, please see our [Complaint Handling Protocol](#).

Enquiries

- > Enquiries are **requests for information**
 - Typically, an injured worker or person injured in a motor vehicle accident will contact Solutions to seek information about:
 - **rights** and **entitlements**
 - how to **lodge a claim**
- > Solutions provides this information, tailored to the enquirer's needs



Complaints

A complaint is:

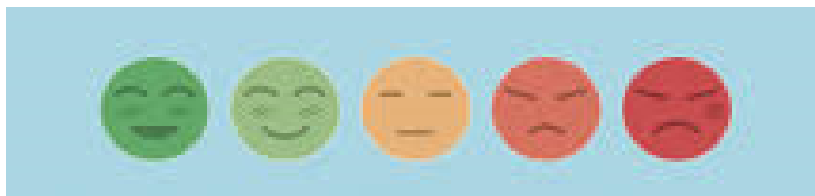
an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required



(as defined in cl 4.2 of the Australian Standard Guidelines for complaint management in organizations (AS 10002:2022))

Complaints (cont.)

- > A complaint can be made by:
 - a claimant (injured person)
 - a claimant's representative (AL, other legal representative, union representative, spouse, other)



Complaints (cont.)

- > Complaints may be made about the **acts** or **omissions** of an **insurer** that affects a claimant's entitlements, rights or obligations under legislation
- > Topics may include:
 - weekly benefits
 - medical treatment
 - denials of liability
 - delays in determining claims

Complaints (cont.)



- > **Clause 4** of the Protocol sets out complaints that IRO **does not** deal with, including those:
 - more appropriately dealt with in **another forum** (e.g.: the PIC)
 - that fall **outside IRO's jurisdiction** (e.g.: complaint by an employer; by an injured worker about their employer; or by a claimant in an interstate system)
 - that have **already been considered** by the IRO (unless new circumstances apply or new information available)
 - made **by a third party** without the claimant's consent
 - that are **frivolous or vexatious**



Complaints (cont.)

- > In handling a complaint, IRO will generally ask the complainant to:
 - provide **identifying information**
 - if a third party (i.e.: not claimant), provide **evidence of claimant's consent** for the third party to make the complaint
 - provide a **summary of complaint** and **solution sought**
 - outline **steps taken** to resolve complaint with the insurer
 - provide **any documents** relevant to the complaint

Complaints (cont.)

- > Where the complainant has **not taken steps to solve** a complaint with the insurer, IRO will generally ask that they do so before IRO intervenes
 - This is **at IRO's discretion**
 - If IRO forms the view that the complainant requires our assistance, we **may intervene** despite the person not having previously contacted the insurer

Complaint handling methods

> *Fast and Fair Solutions Method*

- IRO works quickly to reach a **fair and reasonable solution** to the complaint by **exchanging information** between the complainant and the insurer, and **assisting to develop options** to solve the complaint

> *Investigation Method*

- More **formal model**, where IRO **requests information**, documents, and/or statements from complainant and/or the insurer, and **makes findings** (including reasons) and **non-binding recommendations** for a fair and reasonable solution

Escalation of complaint

- > This may occur if:
 - after **5 business days** following the issue of the **Notice of Complaint (NOC)**, there has been no response (despite IRO follow up)
 - the **response to the NOC** is assessed as **not being fair and reasonable**



Solutions investigations

- > An emerging area of IRO's work
- > Involves **rapid investigation** of complaints where:
 - Solutions thinks the complaint **will not be solved** using the *Fast and Fair Solution Method*; or
 - the **solution proposed** by the insurer is **incomplete**, and/or **not fair and reasonable**



Solutions investigations

- > Solutions generally **won't investigate a complaint:**
 - > where there are **issues of liability in dispute** that would be best determined by the PIC (e.g.: dispute re causation of a psychiatric injury)
 - > that is subject of a investigation by **another agency** (e.g.: a concurrent compliance investigation by SIRA)



Early solutions

- > One of IRO's statutory functions is to seek solutions to disputes
- > Clause 9(2) to Schedule 5 to the *PIC Act* provides:

*...ILARS is to provide funding for legal and associated costs for workers... seeking advice regarding decisions of insurers... and to **provide assistance in finding solutions for disputes between workers and insurers.***

Early solutions (cont.)

- > Part 1.6 of the ILARS Funding Guidelines states:

*The IRO is committed to achieving **just, quick and cost-effective resolution** of... issues... in claims and disputes...*

*ILARS will provide an **early opportunity** for injured workers and insurers **to resolve** a claim or a dispute about a claim.*

*The **IRO may intervene** in a matter the subject of a grant of funding where an opportunity arises for an **early solution** to a claim or dispute about a claim to be achieved.*

Early solutions (cont.)

- > The early solutions work can span both the **Solutions Group** and the **ILARS Group**
- > **Two types** of early solutions:
 - > No response to claim (**NRTC**)
 - > Other

NRTC early solutions



- > Part 3.3.6 of the ILARS Funding Guidelines outlines the NRTC process –

*Where the insurer has **not responded** to a claim or a request for a review within timeframes and/or **attempts to resolve** the dispute with the insurer have **not been made** or such attempts have **not been successful**, the **IRO may** seek to engage with the insurer in an **attempt to resolve** the outstanding dispute or claim or to obtain a response from the insurer.*

Where the IRO engages with the insurer, the IRO's correspondence to the insurer and any response from the insurer (generally received within five (5) working days) will be provided to the Lawyer.

The IRO will generally not grant Stage 3 funding during this period.



Other early solutions

- > The Solutions Group engages in early solutions as part of its complaint and enquiry functions
- > Solutions receive calls, emails and web contacts from injured persons and their representatives about insurers' failure to respond to treatment requests, late payment of weekly benefits, pre-injury average weekly earnings (**PIAWE**), suspension of benefits, and insurer behaviour (e.g.: in case management)
- > These matters may or may not be the subject of an ILARS grant, but can be suitable for early solution intervention

Help us to help you



- > The following greatly assists us to quickly address issues:
 - A **clear summary** the issues and proposed **solution**
 - Advice about **any information of particular relevance** for communication to the insurer
 - **All necessary information** (copy of claim, communication serving the claim, details of how, when and to what address the claim was made)
 - Details of **any follow up with insurer** (when/how/who)
 - If there has been **any acknowledgement** by the insurer or their representative about the claim/issue (including date and nature of communication)



Remember

The **more information you can provide** about communication surrounding the issue, the **easier it is** for us to direct the insurer's attention to the core issue(s) and effect a swift resolution



Solutions Group contacts

- > To lodge an enquiry or complaint with us online:
<https://iro.nsw.gov.au/injured-persons/contact-us-about-insurer>
- > To speak to us about an enquiry or complaint: 13 94 76
- > To lodge an enquiry or complaint with us via email (or if you require further information about our Solutions function): complaints@iro.nsw.gov.au