



Independent
Review Office

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IRO News



Independent Review Office

October 2012 to October 2022: 10 years of helping injured persons and insurers find fair solutions to complaints and claims.

What is IRO News?

IRO News is a publication to keep Independent Review Office (IRO) stakeholders informed about our work. Along with general news and updates, IRO News also features two regular sections, ILARS Update and Solutions Spotlight, where you will read updates on these two specialised areas.

The Independent Legal Assistance and Review Service (ILARS) provides grants of funding to expert workers compensation lawyers (Approved Lawyers) to assist injured workers to understand and pursue their workers compensation entitlements. ILARS also identifies matters appropriate for early solutions by our Solutions Group (Solutions).

In addition to early solutions referred from ILARS, the Solutions Group solves complaints by persons injured at work or in motor accidents about the acts and omissions of insurers, and responds to enquiries from injured persons

IRO marks 10 year of helping injured persons and workers

October 2022 marks 10 years since the statutory role of the (WorkCover/Workers Compensation) Independent Review Officer was first established.

Over these 10 years – through our work in solving complaints or administering grants of legal funding – IRO or WIRO have helped tens of thousands of persons injured at work (and more recently those injured in motor accidents) and insurers

find fair solutions to complaints and claims. We had also made substantial recommendations to improve the personal injury statutory compensation schemes.

We acknowledge the contribution of every IRO and WIRO team member in our first decade of operation. Everyone here shares an unwavering passion and commitment to ensuring fair outcomes for injured persons and insurers. Team members generously share their expertise and experience to continually improve how we work.

We also acknowledge the strong relationships we have with our stakeholders – these have enabled us to most effectively achieve our Mission of finding fair solutions and improving the statutory compensation schemes. We value the trust you have placed in us, and in our second decade will continue to work to earn your confidence and increase our positive impact.

IRO Sydney Seminar survey reports success

Our Sydney Seminar was in June with more than 200 people attending in person and almost 600 logging on for the live-streamed event.

It is the tenth event since the Office's inception in 2012 and the second hosted at UTS Aerial and simultaneously live-streamed.

The seminar focused on the two trends that have stood out in statutory personal injury claims in 2022: the increase in psychological injury claims and the impact of COVID-19.

The seminar zeroed in on the practical impacts of these 'mega-trends' on personal injury claims and addressed:

- how the personal injury system has responded to COVID-19 to date, what are the emerging issues and what are the learnings?
- how increased mental health issues in the community have been reflected in increased psychological injuries in the personal injury system – and what this means in the short and long term?

The seminar brought together experts and practitioners with a range of perspectives on these issues, and included a substantive law focus on

psychological injuries.

An IRO-run survey following the event showed almost 90 per cent of respondents agreed, or strongly agreed, the event “met expectations as a useful learning experience”.

In addition, 95 per cent of respondents agreed or strongly agreed the “speakers were well experienced, well prepared and knowledgeable”.

Further data from the survey showed the Seminar to be a success with 97 per cent satisfied or very satisfied with the event overall.

The full video and presentations can be found on our [website](#).

Policy and Inquiry Update

Review of the IRO Complaints, Compliments and Unreasonable Conduct policies

As previously reported, we have been conducting a review of the *[IRO Complaints and Compliments Policy](#)* and the *[IRO Unreasonable Conduct Policy and Procedure](#)*, which have both been in operation since March 2021 and are published on our website.

We received feedback from our staff and from several external stakeholders which is currently being implemented. The updated policies will be published on our website at the conclusion of the review.

State Insurance Regulatory Authority (SIRA) consultation on draft Motor Accident Guidelines

Over the past several months, SIRA has sought feedback on draft *Motor Accident Guidelines: CTP Care and draft Motor Accident Guidelines (version 9)*. IRO has reviewed and provided comments on both draft guidelines and looks forward to the publication of the final guidelines.

Federal jurisdiction funding policy

The IRO has finalised a new *[Federal Jurisdiction Funding Policy](#)* which commenced on 1 July 2022. The Policy applies to Independent Legal Assistance and Review Service (ILARS) funding for matters affected by federal jurisdiction.

The Policy includes a *Professional Fees and Disbursements Schedule*. More

information can be found [here](#).

NSW Parliament Law and Justice 2022 Review of the Workers Compensation scheme'

In July 2022, IRO made a submission to the Standing Committee on Law and Justice's 2022 Review of the Workers Compensation scheme. The submission can be found [here](#).

The submission reflects the IRO's observations on and experiences with a steadily growing number of psychological injury claims in light of the system objectives in the enabling legislation as set out under section 5 of the PIC Act. It includes data to illustrate both the increased prevalence of this injury type in workers compensation claims, as well as the increased complexity, disputation and costs of these matters.

Independent Review Officer Simon Cohen represented the IRO at the Law and Justice Review of Workers Compensation hearing on Thursday 8 September 2022.

IRO Bulletin

Our IRO Bulletin continues to keep personal injury compensation practitioners up to date on case law developments. A decision of interest detailed in a recent Bulletin is included below.

OneSteel Reinforcing Pty Ltd t/as Liberty OneSteel Reinforcing v Dang [2022] NSWPCPD 32

In this matter, the worker claimed compensation for a back injury (deemed date of injury: 25/09/2016). He commenced Workers Compensation Commission proceedings in May 2018 and on 24/07/2019, consent orders were issued which included a closed period of weekly benefits (with an award for the respondent thereafter) an award for \$5,500 under s 60 Workers Compensation Act 1987 (WCA) for medical and treatment expenses, and "otherwise, award for the respondent".

On 1/12/2020, the worker sought approval for a MRI scan of his lumbar spine, but the appellant refused the request and decided that due to the consent orders he had no further entitlement under s 60 WCA. In mid-2021, he claimed compensation under s 66 WCA for 12% whole person impairment (WPI), but the appellant

disputed the claim and argued an Anshun estoppel applied because the medical evidence relied upon existed at the time of the prior proceedings. However, it did not obtain its own WPI assessment.

Senior Member Capel issued a Certificate of Determination and found that there was no estoppel and he awarded the worker the amounts claimed under ss 60 and 66 WCA. The appellant appealed and argued both estoppel and abuse of process.

Deputy President Wood dismissed the appeal. She cited the decision of the plurality of the High Court of Australia in *Tomlinson v Ramsey Food Processing Pty Limited* [2015] HCA 28 (*Tomlinson*) and observed that an abuse of process and an Anshun estoppel are two distinct concepts, although they have overlapping features.

Wood DP noted that the appellant did not argue “abuse of process” before the Senior Member as its case was that an Anshun estoppel applied and she held that they could not have erred in relation to an issue that was not before him. She stated, relevantly:

118 A summary of the principles enunciated in the early cases with respect to estoppel and its scope in the workers compensation jurisdiction was provided by Neilson CCJ in Bruce. Of particular relevance to the issues in this case, his Honour observed that an Anshun estoppel extends to claims as well as to defences and would apply if it was unreasonable not to rely on that matter now agitated in the original proceedings. His Honour added that such unreasonableness would depend on the facts of each case...

Wood DP held that the Capel SM did not err by determining the claim under s 66 WCA. This case indicates the risk faced by an insurer which disputes a s 66 WCA claim on technical grounds without obtaining an own WPI assessment.



ILARS Snapshot

For the period April 1 to June 30, 2022:

- 5183 new applications for ILARS funding - down 5 per cent from the same period in 2021.
- 4119 ILARS grants finalised – down 9 per cent from the same period in 2021.
- 81 per cent of new applications assessed within five business days

ILARS Review 2022

Work is continuing the ILARS Review, which is examining how effectively current arrangements, and in particular the Guidelines, enable the effective achievement of the statutory purpose, that is, to provide:

- Funding for legal and associated costs for workers seeking advice regarding the decisions of insurers under workers compensation legislation in NSW, and
- Assistance in finding early solutions for disputes between workers and insurers.

The Review is also examining how effectively current arrangements promote relevant workers compensation system objectives.

The findings of the Review will be provided to the IRO in late 2022.

Further details about the review can be viewed on our [website](#).

Any inquiries about the review can be emailed to
ILARSReview2022@iro.nsw.gov.au



Solutions Snapshot

2399 matters received from 1 April 2022 to 30 June 2022, which comprised:

- 1931 complaints from injured workers - up 3 per cent from the same period in 2021.
- 188 early intervention NRTC matters - down 16 per cent from the same period in 2021.
- 280 complaints from persons injured in motor accidents - up 15 per cent from the same period in 2021.

Workers Compensation

Top three complaints issues:

- Delay in determining liability
- Delay in payments
- General Case Management

Motor Accident

Top three complaints issues:

- Timeliness
- Decisions
- Service/communication

Case Studies

Treatment and care

The injured person complained to the IRO that the CTP insurer had declined their dental treatment plan, citing the need for further information, specifically their entire medical history. The injured person stated their general practitioner (GP) had already provided a report answering the insurer's questions in detail.

IRO wrote to the insurer requesting an update on the dental treatment plan. IRO asked how the GP report had not supported the injured person's dental treatment plan and why the entire medical history was not requested earlier on in the claim, noting the claim was lodged more than three years ago.

The insurer responded advising they believed the GP report was inconsistent with a conversation they had with the injured person in February 2019. The insurer also advised they "attempted to request clinical records in 2019 using the Application for Personal Injury Benefits statutory declaration, however they required a specialised authority from the [injured person] prior to the release of clinical records. Unfortunately, a signed copy of the specialised authority was not requested from the [injured person] at this time".

As a result of IRO's enquiries, the insurer escalated the request for an internal review of the decision to deny dental treatment. One day later the insurer provided the IRO a copy of the internal review certificate and statement of reasons wherein the original decision was overturned. The insurer confirmed they would cover the costs of the entire treatment plan, totalling \$10,000. The injured person was very happy with the outcome.

Delay in reimbursing medication on pharmacy account

The injured worker's lawyer contacted the IRO and complained their client had a significant outstanding debt at their chemist for an account that was agreed to by the insurer. Despite the injured worker's and lawyer's attempts to remedy this outstanding debt, the insurer had not paid the invoices. The chemist stopped providing medication without the injured worker paying up-front, which the lawyer advised was difficult for them.

The insurer responded to IRO's *Notice of Complaint* on the same day, and confirmed the accounts were finally paid, but that the pharmacy no longer wished to hold an account for the worker. The insurer offered to set up an account with another pharmacy if the injured worker chose to do so.

Dispute for knee surgery overturned

An injured worker contacted the IRO after an insurer disputed liability for the injured person's right knee surgery in May 2022. The insurer stated insufficient information was available and that the injured worker had already undergone a right knee surgery in November 2020. The injured worker was adamant this surgery had not been completed due to COVID-19 and it was being re-claimed.

IRO asked the insurer to review their file, to see if they had paid any hospital or surgery accounts, whether they had an operation report on file and whether the second specialist had confirmed a previous surgery.

The insurer's response to the IRO inquires included that "the [claims manager] was under the impression the worker had undergone surgery prior to the claim transferring to her and this is in fact not the case". As a consequence, the insurer withdrew its dispute notice.

Claim lodgement not actioned

In May 2022 a claimant's solicitor contacted IRO complaining that they forwarded a claim form, certificate of fitness for work, and referral to their client's CTP insurer in April 2021. However, the insurer had not yet lodged a claim or contacted their client. Evidence of the claim lodgement attempt was also provided, which included an email from a second insurer identifying the correct registration of the vehicle at fault.

The insurer responded to the complaint stating they did receive the claim documents and unfortunately their lodgements team incorrectly determined that the second insurer was the managing insurer. The insurer confirmed the claim was now lodged, a claims advisor will be allocated, and contact will be made with the injured person and their solicitor.

IRO noted the issues that had occurred, and that over a year had passed since initial lodgement attempt. IRO requested the insurer consider escalating the review of the claim. The insurer responded confirming the claim for statutory benefits was now accepted and a copy of the notice was provided in June 2022.