



Independent
Review Office

IRO Approved Lawyer and Paralegal training course

October 2023



Independent
Review Office

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

Presenters:

Silva Ishac, Principal Lawyer ILARS &

Fiona Seaton, Manager ILARS

The WIRO Funding Policy has been replaced by the ILARS Funding Guidelines



Independent
Review Office

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:

Apply for a Grant of Funding

Approved Lawyers may apply for a grant of funding to provide legal advice and assistance to injured eligible workers pursuing workers compensation entitlements. A grant is required for a Lawyer to claim payment of legal costs (professional fees and disbursements) from the IRO.

What does the grant of funding cover?

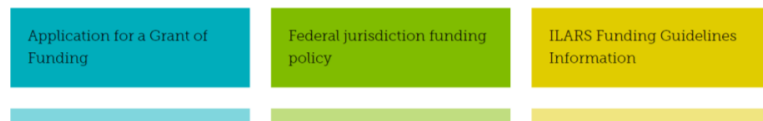
Grants of funding cover professional fees, counsel's fees, medical report fees and the cost of other disbursements and incidental expenses reasonably necessary to investigate a claim or pursue a dispute about a claim.

Referral to the IRO Solutions Group

Some grant applications may be referred to the Solutions Group if it appears the dispute is capable of early or simple resolution. The IRO is focused on resolving disputes quickly, fairly and cost effectively and we encourage Approved Lawyers to adopt the same practical approach.

Grant amounts

Grant amounts are paid on the basis of the outcomes achieved. Legal costs will be paid upon provision of a compliant Tax Invoice in accordance [ILARS Tax Invoice Guide](#).



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

ILARS Funding Guidelines (cont.)

- > **ILARS funds eligible workers** for claims for statutory benefits: cl 1.5 of the Funding Guidelines.
- > **ILARS does not fund exempt workers** (includes 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*).
- > **ILARS does not fund** work injury damages claims

What is funded?

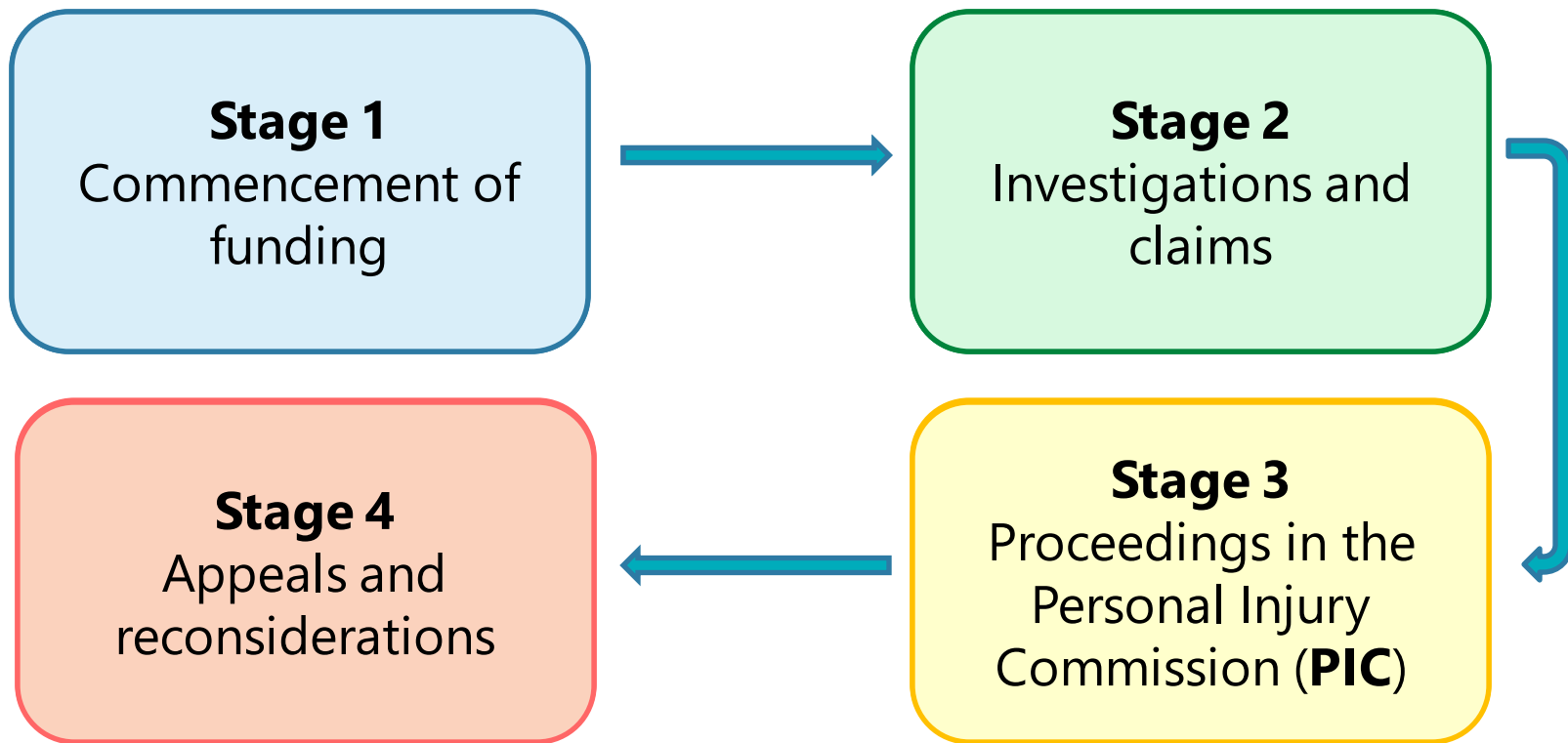
- > Part 6 of the Funding Guidelines ('*Grant amounts*') sets out what is funded, and at what stage of a matter (resolution events and amounts payable)

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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

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Application for a Grant of Funding

Federal jurisdiction funding policy

ILARS Funding Guidelines Information

Federal jurisdiction matters (cont.)

- The *Federal Jurisdiction matters - Professional Fees and Disbursement Schedule* applies: Part 6 of the Funding Guidelines.
- There should be no cost to a worker.
- Costs are payable for matters resolved based on payment of statutory benefits.
- IRO may seek a refund of legal costs (or part thereof) paid under a grant where a worker recovers costs in the District Court: cl 2.15 of the Funding Guidelines
- IRO retains an overarching discretion regarding professional fees paid and reimbursement of disbursements: cll 4.1.3, 4.1.6 and 4.2.2.1 of the Funding Guidelines

Federal jurisdiction matters (cont.)

- > IRO generally does not indemnify a worker where a costs order is made in favour of a Respondent/Defendant by the Court: cl 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 asking IRO to meet these costs **must provide a written submission**, attaching any relevant information and stating why IRO should pay these costs.
- > IRO will pay fees at the conclusion of the legal relationship, or when a final outcome is achieved: cl 4.1.1 of the Funding Guidelines.
- > Interim invoices may be considered in special circumstances: cl 4.3.3 of the Funding Guidelines.

Professional fees and Counsel's fees

- > To provide legal advice.
- > Investigate and assert a worker's rights.
- > Explore early resolution of a dispute.
- > Determination in the PIC.
- > Pursue appeals – by the PIC and higher Courts where appropriate.

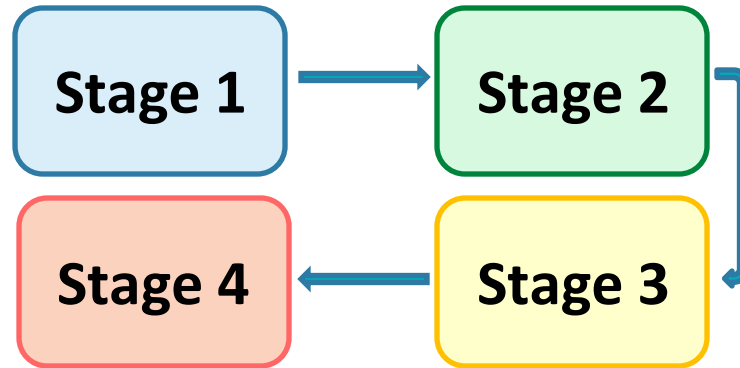


Disbursements

- > Disbursements must be '**reasonably necessary**' to conduct investigations, obtain evidence, or incur expenses to progress a claim/matter.
- > Generally, pre-approval is not required for a first medicolegal assessment by an independent medical examiner (**IME**): cl 4.2.2

Extensions of funding requests

- > Applications for extensions are needed to progress to the next stage of funding.



- > Requesting an extension satisfies your obligation to **keep IRO informed.**

Extensions of funding requests (cont.)

- > You must apply for extensions if you wish to claim payment of legal fees at the conclusion of a claim or resolution of a dispute.
- > These are an essential part of the grant process and ensures that matters are resolved at the earliest opportunity.
- > It also ensures that requirements of the PIC or legislation are met before steps are taken to commence a formal dispute resolution process.

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**.
- > **An AL is expected to provide comprehensive legal advice when retained by an injured worker.**

Stage 2 – Investigations and claims

- > Allows for investigation of a claim.
- > Can be granted initially, or after a **request for an extension** (after Stage 1).
- > To progress from Stage 1 to Stage 2, the extension application **must demonstrate some merit:** cl 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 funding 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 when 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:** cl 3.3.2

Stage 4 – Appeals and reconsiderations

- > An extension of funding **must be sought** for an appeal.
- > **Conditional funding** applies where a worker is the appellant in an appeal to a MAP: cl 3.4.4
- > ILARS does not fund counsel's advice regarding the prospects of success of an appeal to a MAP.
- > If the **worker** wishes to appeal against a decision of a Member, **conditional funding is generally available**, but full funding may be made approved in some circumstances.
- > Clause 3.4.4.1 provides for counsel's advice can be obtained where full funding is sought.

Stage 4 – Appeals and reconsiderations (cont.)

- > Full funding is available where the **worker is the respondent** to an appeal.
- > If a reconsideration application is a precursor to an appeal, it is funded on the same terms as an appeal.
- > If the reconsideration is a stand-alone application by the worker, **conditional funding** will be provided. Full funding applies if the worker is the respondent.

Review of funding decisions

- > An AL who is dissatisfied with a funding decision can seek a **review**.
 - > First level review is undertaken by the **Director, ILARS**.
 - > Second level review is undertaken by the **Independent Review Officer**.



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

Tax invoices

- > A tax invoice should only be issued for **legal costs** (professional fees and disbursements) **when work is concluded**.
- > Interim invoices can be paid in certain circumstances, subject to approval by the Director ILARS: cl 4.3.3.
- > Part 6 of the ILARS Funding Guidelines provides detail on amounts payable for outcomes that are achieved.
- > GST of 10% is **only added** to **professional fees**, not disbursements
- > Counsel's fees are considered as **disbursements (no GST)**
- > Submit the tax invoice and supporting documents in separate PDFs.

Getting your invoice right

- > Tax invoices **must comply** with the [ILARS Tax Invoice Guide](#)
- > (on IRO's website)

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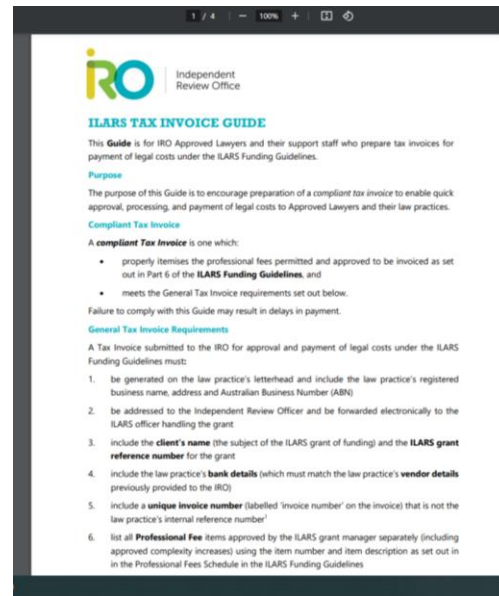
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Application for a Grant of Funding

Federal jurisdiction funding policy

ILARS Funding Guidelines Information



Getting your invoice right (cont.)

- > Tax invoices must:
 - > Be on the **law firm's letterhead**.
 - > Clearly include the **Firm's business details** (including the **ABN or ACN**)
 - > **Bank account details must be the same as those provided to IRO for payment purposes.**
- > Any **changes** to bank details should be communicated to IRO via the appropriate channels.



Payment of legal costs

- > **Payment cannot be made unless the tax invoice is set out correctly.**
- > This means that:
 - > 1. the date of issue must be correct; and/or
 - > 2. the date of resubmission must be correct.
- > **Payment will be made within 30 days of receipt of a correct tax invoice.**



Disbursement categories

- > **Include:**
 - > **Travel** to medicolegal appointments.
 - > **Counsel's fees.**
 - > **Interpreter fees.**
- > Pre-approval is generally not required.
- > Second and supplementary IME reports require pre-approval.
- > Be mindful of the **Fee Orders** (fixed by SIRA and Part 6 of the Grant Amount Guide).

Complexity Increase

> Criteria are set out in cl 4.1.6 for ALs and cl 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*.

- > **A request is not a substitute for a review of a decision on costs.**
- > **Cannot** be used to make up for costs that are apportioned by way of agreement or a decision by a PL.
- > A complexity increase in **federal jurisdiction matters** is based on the Attorney-General's rates for legal representation.

Application for Grants issues - July 2020 – June 2023

Issue	All Firms	
	Number	%
Request for further information	4751	7%
Remind Request for further information	813	17%
Average time to approve application - All accepted applications (Days)	5.0	
Where NO request made for further information (Days)	3.7	
Where a request is made for further information (Days)	23.1	

Applications

Supporting material for a grant of funding **must include:**

1. Detailed submissions that explain the merit/arguable case;
2. Details of insurer's response to claims. Be Mindful of the timeframes for responses to claims by Insurers; and
3. Accurate information.

Please attach PDF's and not links.

Invoices - July 2020 – June 2023

Issue	All Regions	
	Number	%
Invoices processed from law firms	50,721	
Number of cases with invoice errors	11,903	23%
<i>An invoice may have more than one issue and may be returned more than once</i>		
-Grant related issues	10,417	21%
-Invoice related issues	4,983	10%
Issues with MRP invoices	2,419	3%

Requests for Amendment of Tax Invoices

Grant related errors

- Disbursements exceed approved funding – 17%
- Legal cost exceed approved funding - 22%
- Supporting documents not supplied - 54%

Invoice related errors

- No unique invoice number- 8%
- Wrong amount -51%
- Wrong GST -12%

Recurring Themes

Missing or incorrect date

Incorrect or missing ILARS case number

GST added to disbursements

Incorrect amounts

Copies of medico-legal reports

EFT details not correct

Format –PDF is required

Invoices do not tally

There is no unique invoice number - only your ref

Impact of Tax Invoice Errors



Extended response times



Multiple interactions



Significant delay in payment

Changes to how we send and process emails

- On 23 March 2023, ILARS introduced changes to how we manage incoming emails and how we send emails to ALs.
- The change is designed to help ILARS improve productivity in responding to and managing emails.
- The Centralised Email Management System (CEM) will direct all outgoing emails from a new mailbox: ILARSALmail@iro.nsw.gov.au

Impact of the introduction of CEM on ALs

Sending
emails to
ILARS OR
responding
to emails
from ILARS

Emails must:

- be addressed to: ILARSALmail@iro.nsw.gov.au and
- include the ILARS case number in the subject line:
 - C/NN/YYYYY or G/NN/YYYYY

The email will be moved to an Exceptions box if:

- There is no ILARS case number;
- The ILARS case number is invalid; or
- There is more than one ILARS case number.

NB: The CEM works off the ILARS case number and failing to include it will cause considerable delays.

Key points when sending emails to ILARS

- Emails that do not follow the CEM's rules are directed to an **EXCEPTIONS** mailbox.
- The **EXCEPTIONS** mailbox is reviewed manually, and this significantly increases the processing times for applications/requests for funding.
- **DO NOT** send emails to the personal email address of the grant manager.
- Always include the ILARS case number **with no spacing in the subject line**.
- Using a keyword where relevant in the subject line will assist ILARS:
 - For example: 'Invoice', 'Appeal', 'Extension' or 'Update'
 - If you require a response within 2 days, please put 'Urgent' in the subject line.
 - If you regularly mark matters as urgent you may be asked to justify the reasons.

Working *smarter* not *harder*

- > Help us to fund you.
- > Get your tax invoices right the **first time**.
- > Clearly identify the category of report(s) sought.
- > Include the correct **ILARS Grant Number** in emails.
- > Clearly set out what you need (eg. extension of funding, report) in the subject line of the email.
- > Provide documents in pdf. IRO cannot access links due to its cyber security policy.
- > Set out why the case has merit/is arguable.
- > Early provision of relevant information makes for a more efficient and experience for us and a more profitable experience for you.



ILARS Group contacts

- > Fiona Seaton
 - > Fiona.Seaton@iro.nsw.gov.au
 - > +61 2 9395 7406
- > Margot Undercliffe
 - > Margot.Undercliffe@iro.nsw.gov.au
 - > +61 2 8268 1423
- > Michael Vella
 - > Michael.Vella@iro.nsw.gov.au
 - > +61 2 8281 6417



Independent
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Introduction to the Solutions Group: enquiries and complaints handling

Presented by Christie Echo, Principal Lawyer Solutions Group

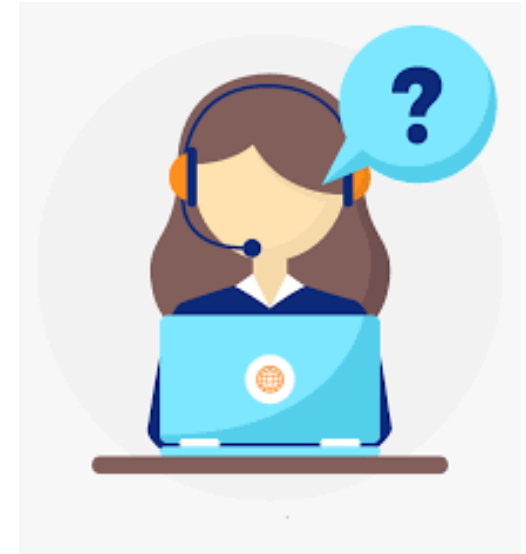
IRO Solutions Group

- > 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**



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/New Zealand Standard 10002:2014 Guidelines for complaint management in organizations)

Complaints (cont.)

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



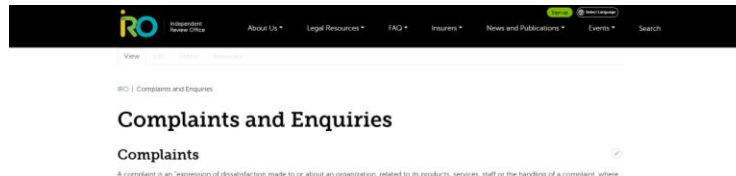
Complaints (cont.)

- > 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.)



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



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](#).



Complaints (cont.)



- > **Clause 3.1** 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 (in the absence of new circumstances or information)
 - 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 tried 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
 - 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