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# ANNUAL REPORT

## 2015

WIRO ANNUAL REPORT 2015

The Workers Compensation Independent Review Office 2014–15 Annual Report has been prepared in accordance with the relevant legislation for the Hon. Victor Dominello MP.

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## Contents

MESSAGE FROM THE WORKERS COMPENSATION INDEPENDENT REVIEW OFFICER .....	1
HIGHLIGHTS .....	3
WHAT WE DO .....	4
<b>COMPLAINTS</b> .....	5
<b>UNDERTAKING INQUIRIES</b> .....	7
<b>INDEPENDENT LEGAL ASSISTANCE AND REVIEW SERVICE</b> .....	9
<b>EMPLOYERS AND INSURERS</b> .....	11
<b>OPERATIONS AND ADMINISTRATION</b> .....	12
<b>REPORT OF THE LAW AND JUSTICE COMMITTEE OF THE LEGISLATIVE COUNCIL</b> .....	13
<b>REPORT BY THE CENTRE FOR INTERNATIONAL ECONOMICS</b> .....	14
<b>PROCEDURAL REVIEWS OF WORK CAPACITY DECISIONS</b> .....	15
APPENDICES.....	19
APPENDIX 1 – STATISTICS.....	19
APPENDIX 2 – CASE STUDIES .....	37
APPENDIX 3 – STAKEHOLDER ENGAGEMENT .....	40



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15 December 2015

The Hon. Victor Dominello MP  
Minister for Innovation and Better Regulation  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Minister,

In accordance with section 27C of the *Workplace Injury Management and Workers Compensation Act 1998*, I have pleasure in submitting, for your information and presentation to Parliament, the Annual Report of the Workers Compensation Independent Review Officer for the period from 1 July 2014 to 30 June 2015.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Kim Garling", with a horizontal line underneath.

Kim Garling  
Workers Compensation Independent Review Officer

## MESSAGE FROM THE WORKERS COMPENSATION INDEPENDENT REVIEW OFFICER

This Office was created as part of the 2012 reforms to the NSW workers compensation scheme and has a variety of functions which do not appear to exist in the one agency in any other workers compensation system.

The fundamental purpose for which this Office was established is set out in the second reading speech for the 2012 reform legislation. The then NSW Treasurer Mr Michael Baird referred to this Office as being an important accountability mechanism for the scheme by dealing with individual complaints and overseeing the scheme as a whole.

In order to fulfil the purpose for which WIRO was created the independence of the Independent Review Officer is essential. Any fetter on this independence adversely impacts on the Officer fulfilling the functions which are set out in the legislation.

One of the very important functions of this Office is set out section 27C of the 1998 Act, which empowers WIRO to undertake inquiries and report to the Minister.

Participants in the workers compensation scheme have repeatedly raised with me and my Office the many ambiguities within, and arising out of sections of the legislation and which occasionally lead to conflicting or unsatisfactory outcomes for participants in the scheme, especially workers.

The Minister for Finance and Services indicated in June 2014 that he was considering some changes to the legislation.

Accordingly in order to assist the Minister in the consideration of sensible reforms I initiated an inquiry into those aspects of the legislation which have given rise to concerns.

That became known as the 'Parkes Project'. I report in more detail later in this Report. What is important to observe is that the Advisory Committee (consisting of industry leaders from diverse interests) reached consensus on 12 key principles.

The members of the Committee all had competing priorities in the scheme and the fact that general consensus was reached represented a major opportunity to harmonise and improve the law. It is the first time such a consensus has been reached on these principles.

Funding to finalise the Project was not approved and the Report has not been completed.

The other major project which continued during the year was the Hearing Loss Project. I identified hearing loss injury as a significant cost to the scheme and a source of frustration and delay for injured workers. It became apparent that the cost of the dispute resolution pathway far exceeded the cost of the provision of hearing aids. In many cases, the costs of managing the disputes for the payment of lump sum compensation to the worker also exceeded the actual compensation.

Almost one in every three applications for funding for legal assistance to WIRO is for workers with hearing loss.

WIRO developed software for an audiologist to assess hearing loss objectively and avoid the expense of an expert's report or a disputed claim. The new audiogram has been tested by WIRO and the new model should be ready to implement next year. It is likely that the new audiogram will be adopted nationally and overseas.

The finalisation of this project will depend on whether further funding is approved.

WIRO has continued to promote the role and function of the Office. After the success of the Easter show in 2014 another stand was hosted by WIRO in 2015. WIRO also hosted two stakeholder seminars each attended by over 400 participants.

It is important to appreciate that the significant success of this Office in its pioneering of a new style of dispute resolution has largely been due to the skills of the contact officers. These officers take the telephone calls and deal with the emails from injured workers with matters of concern about their claims swiftly and effectively.

Each of these dedicated members of staff have been committed to finding a mutually satisfactory answer for the injured worker consistent with the obligations of the Insurer.

The next year will also prove challenging for all the participants in the workers compensation system as the 2015 changes start to impact on the daily lives of injured workers and the operations of employers and insurers.



KA Garling  
Workers Compensation Independent Review Officer

## HIGHLIGHTS

### ***Well attended, well received seminars***

In August 2014, WIRO hosted a Seminar which explored the impact of the 2012 reforms and compared the intention of the reforms with the current workers compensation landscape. Recent cases and issues were discussed as well as the practical implications of the legal landscape and WIRO's role, particularly for legal practitioners. Representatives from WIRO, the legal profession, government, the WorkCover Authority and the Safety, Return to Work and Support Division spoke. The seminar had over 400 attendees.

A further seminar was held in February 2015. This seminar explored developments over the previous 12 months and looked to the future of the scheme. Representatives from the industry and the legal profession gave excellent presentations. This Seminar was attended by a broader cross-section of representatives from unions, insurance brokers as well as insurers, individual employers and the legal profession.

Both seminars were rated very highly by those present across a variety of aspects.

### ***Raising awareness***

After the success of the previous year, WIRO hosted another stand at the Royal Easter show to raise awareness of our role and function with the general public. Over 800,000 people passed through the gates to the show and over 5,000 were given an information package when they visited WIRO's stand. Many more took one or more of the promotional items available at the stand. WIRO continues to find ways to reach injured workers and employers who might need our assistance with workers compensation issues.

### ***Continuous improvement***

WIRO continues to improve its business through innovation and technology and reviewing its processes and procedures. We welcome feedback on any of our policies and procedures whether positive or not.

After nearly 3 years in operation WIRO remains paperless. This is a key contributor to WIRO's ability to deal with complaints and ILARS applications in an efficient and timely manner.

The Resolve database is scheduled for further upgrade in the new financial year, enabling better and more detailed capture of information about the workers compensation system. WIRO continues to capture and evaluate valuable data about the workers compensation landscape that is not available in one place anywhere else.

The information has already been used to show the legal profession details of their performance as a business. The ILARS Implementation Director visited several law firms during the reporting period where those firms' performance was compared to the average performance of firms as recorded by WIRO.

The managing partners were able to gauge their performance in relation to timeliness and efficiency and identify areas for improvement. This provides significant benefits for the firms

as they are able to better appreciate the key performance indicators drawn across the whole profession.

## WHO WE ARE

WIRO is a small office of about 30 staff. It is divided into five functional groups.

The Complaints Group

The ILARS Lawyers

The Operations Group

The Procedural Review of Work Capacity Decisions Team

The Employer Complaints Team

## WHAT WE DO

WIRO provides an important accountability mechanism for the NSW workers compensation System. WIRO deals with complaints about insurers and manages the provision of legal assistance for injured workers.

WIRO's statutory functions, set out in section 27 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act), are to:

- Resolve complaints made by workers about insurers;
- Review the procedures used by an insurer to make work capacity decisions;
- Encourage the establishment of a dispute resolution processes between employers and insurers; and
- Undertake enquiries into and report to the Minister on matters arising in connection with the operation of the Workers Compensation Acts.

WIRO also has responsibility for facilitating access to independent legal advice for injured workers by providing funding to lawyers to assist workers and resolve disputes about entitlements.

The NSW government sector values of integrity, trust, service and accountability, enshrined in the *Government Sector Employment Act 2013* are part of the way WIRO approaches its work. In particular WIRO is committed to:

Independence – We are impartial, fair and just

Respect – We show empathy, we are polite and honest

Collaboration – We work together, focusing on unity

Accessibility – We encourage direct, timely access to us as a resource and are responsive

Innovation – We find new and better ways of solving problems



## COMPLAINTS

Sections 27(a) and 27A of the 1998 Act provides that WIRO has the function of dealing with complaints by workers about any act or omission of an insurer that affects the entitlements, rights or obligations of the worker under the Workers Compensation Acts.

WIRO has taken the view since it was established that the primary purpose of dealing with complaints from injured workers is to find a mutually satisfactory solution to the matters of concern raised by the worker.

WIRO answers queries from workers about a wide variety of issues that arise on a daily basis about the operation of the Scheme. These queries will often be answered without reference to an Insurer or a Lawyer.

Where the matters of concern relate to the management of a specific claim by a worker then a Preliminary Enquiry is sent by email to the Insurer. If it is very urgent then a member of the Complaints Group will contact the Insurer by telephone.

The Protocol adopted to guide how Insurers deal with these matters expects that there will be a prompt response (generally within 48 hours) and the Insurers have continued to very effective in meeting this time for response.

Where the matters are complex then further time may be necessary.

WIRO sees communication with insurers to be crucial to the success of this function and has continued its practice of visiting and hosting individual insurers at our Office regularly to discuss matters of mutual interest and observe how the Complaints Group operates.

This year the Group received 16,610 calls through the 13WIRO number, as well as 655 e-mails through our web based contact box. This is a very substantial increase over previous years. This year WIRO initiated 2,198 Enquiries, an increase of 42 % over the previous year.

A complaint most commonly arises where an injured worker has a specific concern in relation to her or his claim which has to be considered by an insurer. WIRO received 2,666 Complaints during the reporting period, an increase of 52% over the previous year. The most common issues concern weekly benefits, including the calculation of pre-injury average weekly earnings (PIAWE), medical treatment, and delays in determining liability (Refer Figure A4 in Appendix 1).

The total number of complaints included 387 cases referred by ILARS, either because the quantum in dispute did not justify a grant of legal funding, or because it was thought likely that the Complaints Group would be able to resolve the matter quickly.

Section 27C(4)(c) of the *Workplace Injury Management and Workers Compensation Act 1998* requires WIRO to report on the number and type of complaints that were made during the year but not dealt with. As at 30 June 2015 there were 50 complaints which had been received and not finalised. Most of these complaints were received very close to the

conclusion of the reporting period and were well on the way to being finalised within acceptable timeframes.

At the beginning of the reporting period WIRO had 60 complaints on hand. At the end of the reporting period, WIRO had 50 complaints on hand, having finalised a total of 2,676 matters covering a variety of issues. Details can be found in Figures A3 & A4.

Full details concerning enquiries, complaints and issues can also be found in Appendix B1, including the number of matters for each insurer by type – Scheme Agents, Treasury Managed Fund Claims Managers, Self-Insurers and Specialised Insurers.

Despite the very large increase in complaints, the Complaints Group maintained speedy turnaround times, solving 59% of complaints within 7 days and 87 % within 15 days. Details can be seen in Figure A6.

Even more importantly, the Complaints Group raised the percentage of complaints solved to the satisfaction of injured workers and insurers from 52% in 2013-14 to 66% this year, a fine achievement and proof of the success of WIRO's approach and the commitment of insurers. See Figure A2 for details.

Lawyers with a good knowledge of WIRO, continue to dominate the referral network (62 % of referrals) for injured workers contacting WIRO.

The figures for contact sources in Figure A7 highlight a major issue for WIRO – the low level of awareness of WIRO and its role amongst injured workers. We believe the best and simplest solution for this problem lies with the insurers. As a matter of course, the first letter from an insurer to an injured worker following receipt of a claim, and any subsequent letters which involve an unfavourable decision by the insurer, should refer to the existence, role and contact details of WIRO.

### ***Weekly Benefits***

Disputes about weekly benefits are now the major issue raised with WIRO by injured workers – 29 % of all issues. These complaints cover a variety of scenarios, including incorrect calculations, failure to apply biannual indexation, PIAWE and withdrawal of benefits.

Case scenarios of typical complaints about weekly benefits can be found in Appendix 2.

### ***Medical Disputes***

Closely following weekly benefit issues are complaints about medical treatment and payment of medical expenses – 23% of total issues.

Complaints about delays in approving or refusal to approve surgery or other medical procedures are a continuing source of frustration and distress for injured workers. Section 59A of the 1987 Act provides that some workers cease to be entitled to have medical expenses met once a year has elapsed since entitlement to weekly payments has ceased.

This has exacerbated this situation. In these circumstances a delay making a decision can impact on whether a worker has his or her expenses paid. This can cause particular hardship when the expense is substantial for the worker and may even prevent a worker from accessing medical treatment (to enable a prompt return to work following a workplace injury) to which he or she would ordinarily be entitled. Disputes also arise where insurers fail to pay approved medical expenses.

Case scenarios of typical complaints about medical treatment and expenses can be found in Appendix 2.

## UNDERTAKING INQUIRIES

### *The Parkes Inquiry*

Section 27(c) of the 1998 Act provides that WIRO may undertake inquiries into, and report on such matters arising in connection with the operation of the Workers Compensation Acts as the WIRO considers appropriate or as may be referred by the Minister.

During the reporting year WIRO instituted an Enquiry which was christened the “Parkes Project”. This was an inquiry into the Workers Compensation Acts and case law with a view to identifying inconsistencies as well as opportunities to harmonise the law.

The Inquiry progressed to the point where the Advisory Committee substantially agreed on 12 major principles that would result in significant improvement to the scheme for all stakeholders. Those principles are:

1. Clarifying the definition and calculation of weekly payments for injured workers;
2. Ensuring the approvals and time limits for access to medical treatment for injured workers operate fairly and with clarity;
3. Providing increased opportunity for claims to be negotiated, settled and resolved;
4. Ensuring the definitions in the legislation are clear and consistent, particularly with reference to definitions of ‘injury’, ‘claim’ and in relation to the eligibility of particular workers to access the scheme;
5. Adequate provision of support to seriously injured workers, clarifying which workers qualify and ensuring workers who have had more than one workplace injury can aggregate injuries to meet the threshold;
6. Improving access to information for injured workers;

7. Clarifying how many claims can be made and how many assessments conducted of permanently impaired injured workers;
8. Improving the operation of the work capacity decision process, in particular in relation to the confusion between work capacity decisions and decisions determining liability for a claim and the circumstances in which the Workers Compensation Commission has jurisdiction;
9. Clarifying and harmonising the costs regime in the scheme to encompass work capacity decisions and ensuring injured workers have appropriate access to legal representation;
10. Clarifying and simplifying return to work obligations for injured workers and employers;
11. Ensuring the appropriate use of independent medical examiners to minimise litigation and delay and ensuring medical examiners are appropriately reimbursed; and
12. Addressing unfairness in section 151Z(2) of the 1987 Act which may unfairly reduce the damages payable to an injured worker where another party is sued for damages.

As mentioned elsewhere in this report the Inquiry did not progress to finalisation due to funding not being made available.

In the next reporting period WIRO will continue to inquire into, and make recommendations in relation to, improvements to workers compensation law in NSW.

### ***The Hearing Loss Inquiry***

During the reporting period, WIRO continued to collect data about the types of matters that cause delay and expense in the workers compensation system. Hearing loss matters were identified as requiring particular attention. An injured worker would often have to wait up to a year to obtain hearing aids even where a claim was not disputed.

WIRO identified that the hearing loss tables being used to measure 'hearing disability' had been in place since the end of World War II and most recently updated in 1988. The tables were based on a small sample of hearing impaired returned servicemen. The tables were intended to measure disability but over time were used to calculate monetary compensation.

The Hearing Loss Inquiry has developed a methodology for determining the degree of hearing loss due to age, industrial noise and other factors by way of a simple audiogram, rather than examination by an ear nose and throat specialist.

With a WIRO audiogram the whole process for a worker to obtain hearing aids and compensation should take no longer than a month. The cost of the process will rarely, if ever be more than the cost to the scheme of the benefit to the worker.

Roll out of the audiogram will depend on funding being made available.

## INDEPENDENT LEGAL ASSISTANCE AND REVIEW SERVICE

ILARS deals with a high volume of grant applications under considerable pressure to process these applications quickly. The ILARS Lawyers aims to process grant applications or refer suitable matters to the Complaints Group for action in a timely fashion, usually within 10 business days.

ILARS received 11,080 applications in the 2014–15 reporting period and has processed more than 32,950 since the inception of the service.

Fifteen ILARS lawyers deal with new applications for legal funding, send out requests for further information, process invoices and applications for extended funding, and participate in project and other work according to the needs of WIRO. In 2014-15 more than \$44 million was paid to Approved Lawyers including \$1.58 million to Barristers.

At 30 June 2015, there were 854 approved providers whose contact details can be found on our website.

The ILARS approach to dealing with funding applications provides a quick but sound decision on a grant of funding by ensuring that all applications, enquiries, requests for extended funding and processing of invoices are dealt with within 10 business days from the date of receipt. The ILARS Lawyers achieve efficiencies by applying the case management approach of an individual ILARS Lawyer handling each matter throughout the life of the matter.

The ILARS decision whether to grant funding is based on an assessment of the prospects of the success of a claim or dispute by looking at:

- Submissions made by the Approved Lawyer;
- The currency and quality of the medical or clinical evidence provided in the application;
- The application of the various legislative provisions in relation to the claim of dispute; and
- The practical considerations relevant to the particular facts of the claim or dispute.

Once a grant of funding is approved, the Approved Lawyer is reminded of his or her obligation to the client and to WIRO in accordance with the Agreement with the Independent Review Officer to be an Approved Lawyer and ILARS Policy.

Almost 55% of matters funded relate to investigation of whole person permanent impairment ('WPI') claims for lump sum compensation. Once medical evidence has been obtained which supports the claim for WPI and the claim is made on the insurer, the insurer has two months to respond to the claim. In many instances there was no response by the insurer in the two month period and funding is then sought to proceed to litigate the claim before the Workers Compensation Commission.

During the course of the 2014-15 reporting period ILARS commenced a process of contacting insurers who had failed to respond to the claims before extending funding to take claims to the Workers Compensation Commission. In the period 2 March 2015 to 30 June 2015 we contacted insurers in 388 matters including 42 matters where the insurer had failed to respond to a request for a review of the insurer's decision.

At 30 June 2015 we had closed 373 matters of this type. Of these closed matters 73% related to claims for lump sum payment for permanent impairment and 12% related to medical treatment or medical costs issues. WIRO has had considerable success in resolving these matters. In 39% of matters the claim was accepted or had already been determined and a delay notifying the injured worker was overcome. In 9% of matters a counter offer was made.

In 24% of matters the insurer declined liability and the injured workers were provided with information and assistance if they wished to dispute the decision. Where liability was declined the delay for the worker being notified of this decision was overcome and the worker was able to take steps to challenge the decision earlier than would otherwise have been the case.

Since the WIRO office commenced we have been able to gather significant statistical information on the relative performance of our Approved Lawyers. During the course of the year we have met with many firms and shared the information we have gathered. We have provided information which compares them with their competitors in their region as well as across the scheme as a whole. We have identified firms which are leaders in progressing matters, invoicing WIRO and closing files and provided comparative figures. The information identifies firms which have had a high percentage of funding approvals and those which have had a higher proportion of matters declined. The information has been extremely well received by the legal firms and is a very useful management tool for these firms. We propose to continue this process during the 2015-2016 year.

As the provision of legal funding is at the discretion of WIRO, ILARS is not bound by the accepted costs figures in Schedule 6 of the *Workers Compensation Regulation 2010*. The current costs schedule has been largely adopted to encourage consistency and use an objective standard in relation to costs for ILARS-funded matters. Where the Schedule is silent the amount of an ILARS grant of funding is stipulated in ILARS Policy.

During the course of the year we saw a trend develop of a gradual decline in WPI funding applications and an increase in applications for funding in weekly benefits disputes. Insurers continued to move away from issuing work capacity decisions and increasingly issued notices disputing liability or a worker's entitlement to weekly payments on the basis of their work capacity. In these circumstances workers were able to seek funding for legal assistance.

Since the end of the current reporting period the scheme has been significantly impacted by the New South Wales Court of Appeal decision in *Cram Fluid Power Pty Ltd v Green*. The

Court confirmed that injured workers were only entitled to make one claim for permanent impairment compensation. Since the end of the reporting period the law has been amended.

## **EMPLOYERS AND INSURERS**

As a sign of the increasing awareness of WIRO in the workers compensation system, the number of complaints and enquiries received from employers doubled in the second half of the reporting period.

The main issues raised by employers were communication with the Scheme Agents and disputes surrounding calculations of premium or an injured worker's PIAWE.

### ***Communication Issues***

44% of complaints covered the following scenarios:

- Claims by experience rated employers that Scheme Agents have managed claims in a way which increased the employer's costs. In some of these cases it is the employer's first major claim in circumstances where the employer is unfamiliar with the claims process, whereas the insurer's case manager assumes the employer has knowledge of the process.
- The injured worker has suffered a psychological injury and confusion arises between employers and Scheme Agents about the information the employer is entitled to and what the Scheme Agent is obliged to provide. A related issue in some of these cases is the acceptance of liability by the Scheme Agent in circumstances where the relationships in the workplace have broken down and the employer does not believe the psychological injury has been caused by the workplace.
- Long term cases where the injured worker has not returned to pre-injury duties and the employer believes the worker has full capacity to return to work. In some of these cases WIRO has asked for a review of the case by the Scheme Agent.

### ***Incorrect or disputed payments and calculations***

- Where late fees or penalties for unpaid premiums are involved WIRO has been successful in working with Scheme Agents to lodge appeals to WorkCover Insurance for the refund of the fee or penalty.
- Often the reason late fees or penalties are applied is due to a lack of communication between the employer and the Scheme Agent. WIRO's intervention often explains the reason why charges have been incurred by the employer. This goes some way to resolving the complaint even if a refund cannot or will not be made.
- Disputes often arise because the employer does not understand that a Scheme Agent automatically renews policies and often assertively seeks to recover debts (unpaid premiums).

## OPERATIONS AND ADMINISTRATION

The Operations Group at WIRO are responsible for the management of finance and information technology functions, the development of policy and strategy, oversight of projects, and the management of marketing and communications for the Office.

As mentioned, WIRO conducted two seminars at Olympic Park. These seminars were attended by over 400 stakeholders including Approved Lawyers, insurers and return to work representatives. The feedback from both seminars was generally very positive.

For the second year running WIRO had a stand at the Royal Easter Show. This is a major logistics effort for a small office to undertake as the stand needed to be manned for 12 hours each day for 14 days and be regularly re-stocked. This was a great opportunity for WIRO and our staff to engage with a wide variety of people who have been impacted by a workplace injury.

In the technology area WIRO upgraded its Resolve case management system in January 2015 to the latest version prior to undertaking a major enhancement which provides for paperless processing and multi-level approvals of invoices received from Approved Lawyers. Invoices from Approved Lawyers once approved are then sent in a batch by email to accounts payable for payment. The new process will save time and improve accuracy as well as providing valuable data on the cost breakdown of invoices for different types of workers compensation matter.

During 2014/15 WIRO processed in excess of \$44 million in fees and disbursements from Approved Lawyers, the hard work of WIRO's dedicated administrative staff in this regard is to be commended.

WIRO has also reviewed its current operational workflows and plans to upgrade these in the new financial year.

From February 2015, as mentioned earlier in this report, WIRO has been meeting with law firms to discuss their performance in completing applications for grants, managing workers compensation claims and closing matters relative to the average for all firms. Although the production of each firm's report is labour intensive, it has proved to be a great service for approved providers who can, for the first time, compare their relative performance and market share to their industry peers. One of the aims of meeting with each firm is to increase both the efficiency and productivity of the firm and the market as a whole.

WIRO completed Project Refresh during the reporting period. This project:

- Updated, streamlined, harmonised and clarified all standard correspondence to approved providers;
- Consolidated policy and procedure for making grants of financial assistance to injured workers for legal costs associated with workers compensation matters;
- Updated and streamlined the Application and Agreement to become an approved provider with WIRO;



- Updated and streamlined the ILARS Grant Application Form;
- Created a policy on review of decisions made by WIRO;
- Updated the ILARS Tax Invoice Guide; and
- Published Approval and Practice Standards for Approved Lawyers. These standards articulate the knowledge and experience required to obtain and maintain Approved Lawyer status with WIRO;

WIRO also conducted an audit of the list of Approved Lawyers to determine those who did not appear to be active in the jurisdiction. Those who had not made an application for a grant of assistance in the previous 6 months were removed as Approved Lawyers unless there was good reason not to.

Projects to assist Approved Lawyers with the ILARS application form and invoicing were also commenced. Early in the next reporting period WIRO aims to:

- Upload example ILARS grant application forms and invoices to the website for approved providers to use as a guide when dealing with WIRO.
- Conduct training sessions with approved providers and paralegals on applying for grants of assistance and creating invoices for WIRO.
- Provide general medical practitioners with information about workers compensation and WIRO in the form of brochures for injured workers to be made available in general practitioners' waiting rooms.

Another project focus in the coming year will be dealing with ILARS grants that have been on foot for long periods with a view to overcoming delays for injured workers.

## **REPORT OF THE LAW AND JUSTICE COMMITTEE OF THE LEGISLATIVE COUNCIL**

The Law and Justice Committee of the NSW Legislative Council completed its Review of the operations of the WorkCover Authority and issued its Final Report in September 2014. The Committee's recommendations were unanimous.

The Committee made 26 recommendations. Five of those recommendations involved this Office. I attended a meeting of senior executives of the WorkCover Authority to discuss how to implement the recommendations of the Committee which affected this Office.

I was informed that the WorkCover Authority could not move to implement any of the recommendations until such time as the NSW Government had finalised its response to the recommendations. I was further informed that the Government was not required to respond for six months.

The relevant recommendations were:

### ***Recommendation 1***

That the Minister for Finance and Services, in consultation with the WorkCover Independent Review Office and other stakeholders, consider establishing a separate agency or other

administrative arrangements to clearly separate the roles of regulator and nominal insurer in the workers compensation scheme, and implement that model as soon as practicable.

**Recommendation 2**

That the WorkCover Authority of NSW consult with stakeholders, including worker and employer representatives, during its review of the segregation of functions and delegations around its role in work capacity decisions and that it publish the review's findings.

**Recommendation 3**

That the WorkCover Authority of NSW, in consultation with stakeholders, review the procedures currently utilised to distinguish between the work health and safety regulatory and advisory roles of WorkCover, and implement protocols to minimise potential conflicts of interest.

**Recommendation 5**

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.

**Recommendation 8**

That the WorkCover Authority of NSW and the WorkCover Independent Review Office collaborate to develop a process whereby disagreements over assessments of permanent impairment can be resolved through negotiation between an insurer and an injured worker.

There was no further consultation with WIRO on any of these recommendations. The Government reported back to the Committee without addressing or committing to the implementation of any of these recommendations.

**REPORT BY THE CENTRE FOR INTERNATIONAL ECONOMICS**

During the 2013-14 reporting period the Office of Finance and Services commissioned a report by the Centre for International Economics (the CIE Report). The report was intended to be a statutory review of the *Workers Compensation Act 2012* and the impact of the 2012 reforms. It was published on 30 June 2014. The report contained serious errors so far as it concerned the role, function and impact of WIRO.

One significant serious error related to a finding about the funding for Approved Lawyers to advise injured workers about the new dispute resolution process.

In the final report CIE stated:

**[1] Unfairness around dispute resolution procedures**

***“Many stakeholders to the review have highlighted concerns around with new dispute resolution process in terms of fairness and independence, which in many cases are seen to unintentionally disadvantage injured workers.*”**

***These concerns relate primarily to the following:***

**# *the limiting of legal presentation for injured workers to ILARS.58***<sup>1</sup>

***Footnote 58 reads as follows:***

***“There are also limitations with the funding model for process reviews via ILARS, which does not discourage inappropriate dispute claims”<sup>1</sup>***

The new dispute resolution process in that statement appears to be a reference to the review process set out in section 44 of the 1987 Act in respect of work capacity decisions.

Section 44(6) of the 1987 Act contained a prohibition on lawyers charging for their services in respect of the work capacity review process. ILARS funding has never been available for reviews of work capacity decisions and there has never been any scope for ILARS or WIRO to ‘discourage’ inappropriate applications for review of work capacity decisions.

Another serious error arose from the following statement:

*The ILARS mechanism contains no incentives to ensure that the (sic) only genuine complaints seek legal redress and it is not clear whether the vehicle for legal funding should be nested within WIRO.<sup>2</sup>*

This misunderstands the role and function of ILARS in vetting applications for grants of funding to ensure unmeritorious matters do not proceed.

These errors were most regrettable. It was also unfortunate that CIE chose not to correct these and other errors.

## **PROCEDURAL REVIEWS OF WORK CAPACITY DECISIONS**

One of the functions of the WIRO conferred by section 27 of the *Workplace Injury Management and Workers Compensation Act 1998* is:

*‘(b) to review work capacity decisions of insurers under Division 2 (Weekly compensation by way of income support) of Part 3 of the 1987 Act.’*

Relevantly, Part 3 of the 1987 Act contains section 44 which sets out the process by which work capacity decisions can be reviewed. WIRO may conduct a procedural review only after both internal review by the insurer and merit review by WorkCover.

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<sup>1</sup> Page 63, CIE Final Report

<sup>2</sup> Ibid. Page 17

This means that WIRO is to conduct a procedural review of a work capacity decision and may not inquire into the merits of the original decision or the merit review recommendation. An aggrieved worker may approach the Supreme Court for judicial review at any stage of the process.

Section 27C(d) of the 1998 Act provides that the WIRO Annual Report must include 'information on the operation of the process for review of work capacity decisions of insurers during the year and any recommendations for legislative or other improvements to that process.' These recommendations appear below.

### ***The Year in Numbers***

In the reporting year from 1 July 2014 to 30 June 2015 WIRO received 268 applications for procedural review. The number seems high and is no doubt inflated by the delay initially experienced within the merit review service which resulted in a large number of reviews of work capacity decisions from the year 2013-14 not being finalised in that year.

Of the 268 applications for procedural review received, six (6) were withdrawn and as at 30 June 2015 there were 19 applications outstanding or in-progress. As at 1 July 2014 there had been 33 applications outstanding or in-progress. In the course of the reporting year 276 procedural reviews were completed.

### ***Trends***

Initially Insurers had struggled to comply with the legislative requirements in relation to giving workers adequate, complete and satisfactory notices of work capacity decisions. During the course of the year there was a noticeable improvement in overall standards, although the number of decisions overturned in the course of procedural review remained higher than might be desired.

Total recommendations	Worker successful	Worker unsuccessful
276 (100%)	170 (61.6%)	106 (38.4%)

### ***Clause 30, Schedule 8 Workers Compensation Regulation 2010***

Following an Upper House Inquiry an amendment was made to the *Workers Compensation Regulation 2010*, inserting at clause 30 of Schedule 8 a provision for a 'stay' to operate during the course of section 44 review of a work capacity decision. The stay prevents any action being taken to implement a work capacity decision while a review under section 44 is in progress, but only if (a) the worker had an 'existing claim' as at 1 October 2012 and (b) internal review was requested within 30 days of the worker receiving notice of the original work capacity decision. If the worker applies for internal review more than 30 days after receipt of the work capacity decision, the stay does not operate in the course of internal review, but may arise once the worker applies for merit review. The amendment was published on 3 September 2014 but was retroactive to 1 October 2012. At present it remains limited to 'existing claims.'

### ***Most Recent Developments***

Despite the overall annualised figures showing that workers have a 62% success rate in having work capacity decisions overturned in the course of procedural review, the figures for the second-half of the year show a strong trend the other way. Between 1 January and 30 June 2015 there were 108 recommendations with workers being successful 45 times (42%) and unsuccessful 63 times (58%). One factor in this turnaround was the increasing number of workers coming back for a second or (more rarely) third procedural review. Insurers tend to comply with the recommendations made by WIRO and consequently their decisions are only infrequently overturned a second time in relation to the same worker.

### ***Relevant Decision by Workers Compensation Commission of NSW***

The decision of *Rawson v Coastal Management Group Pty Ltd* [2015] NSWCCPD 3 (20 January 2015) clarified the question of whether or not an insurer can or may pay a worker for past periods of no or reduced work capacity following a work capacity decision. At paragraphs 81-82 the learned Deputy President made the following observations:

81. [...]As its decision was that Mr Rawson had ‘no current work capacity’ and as that expression is defined to mean ‘a present inability arising from an injury such that the worker is not able to return to work, either in the worker’s pre-injury employment or in suitable employment’ (s 32A), it seems that the insurer has decided that the phrase ‘present inability’ dictates that a work capacity decision can only apply from the date it is made. That is patently incorrect.
  
82. The expression ‘present inability’ relates to the time from which the weekly compensation is sought and requires a decision about a worker’s ‘current work capacity’ that applies at and from that time, even though the work capacity decision may not be made until a later time. **Any other interpretation leads to workers being denied compensation because of the insurer’s delay in making the work capacity decision.** In the present claim, an assessment of Mr Rawson’s ‘current work capacity’ had to be made from the date on which the new provisions applied to him, that is, from 17 September 2012, having regard to the available evidence. The fact that the work capacity decision was not made until September 2014 does not change that fundamental requirement. (Emphasis added.)

It is to be hoped that this reasoning will be accepted and applied by insurers, so as to overcome the all too common situation of insurers advising injured workers that any decision about weekly payments could not be back-dated and could only apply from the date of the decision. Insurers had been told to use that particular interpretation by WorkCover. It is clearly wrong in law.

### ***Work Capacity Decisions Disguised as Liability Disputes***

Some insurers have adopted the practice of issuing section 74 Notices purporting to be based on an assessment of work capacity. Given that the Workers Compensation Commission is the only body which can determine a section 74 dispute, it is improper for an Insurer to issue a section 74 Notice on grounds which are not justiciable in the Commission. A worker attempting to file an Application to Resolve a Dispute (ARD) in response to such a Notice will usually have the ARD rejected by the Registry. There is no recourse to merit review or procedural review, since no 'work capacity decision' has been issued and a section 74 Notice cannot be the subject of merit review or procedural review. Workers finding themselves in this position are bereft of a remedy.

### ***Recommendations for Legislative Improvement – Work Capacity Decisions***

1. WIRO recommends that consideration be given to legislating for mandatory back-payment of benefits to workers who successfully challenge work capacity decisions at any stage in the course of section 44 review.
2. WIRO recommends that consideration be given to amending section 43 so as to clarify the position that an insurer may not decline liability to make weekly payments in the course of a work capacity decision and may not issue a section 74 Notice instead of a work capacity decision.

## APPENDICES

### APPENDIX 1 – STATISTICS

Figure A1 | Number of complaints and enquiries received from 1 July 2014 to 30 June 2015



Figure A2 | Complaint Outcomes

Outcome	No	%
Case Withdrawn	3	<1%
Declined	45	2%
Further Inquiry No Further Action	24	1%
Further Inquiry Resolved	25	1%
Preliminary Inquiry No Further Action	812	30%
Preliminary Inquiry Resolved	1767	66%
<b>Total</b>	<b>2676</b>	

Note: these figures relate to complaints closed during the financial year.

**Figure A3 | The number of complaints received but not dealt with during the financial year**

	<b>60</b>
<b>Complaints on hand at the beginning of financial year</b>	
<b>Complaints opened</b>	2666
<b>Complaints closed</b>	2676
<b>Complaints on hand at the end of the financial year</b>	50

Note: Refer Section 27C(4)(c) of the *Workplace Injury Management and Workers Compensation Act 1998*.

**Figure A4 | The type of complaints made during the financial year but not dealt with**

<b>Primary issue of the Complaint</b>	<b>Complaints closed during the financial year</b>	<b>Complaints received but not dealt with before 30 June 15</b>	<b>Percentage</b>
<b>Communication</b>	237	2	9%
<b>Delay</b>	397	5	15%
<b>Denial of Liability</b>	220	3	8%
<b>Independent medical Examination</b>	69		3%
<b>Medical treatment</b>	604	14	23%
<b>Rehabilitation</b>	152	3	6%
<b>Weekly Benefits</b>	837	20	31%
<b>Work Capacity (general)</b>	92	2	3%
<b>WPI</b>	67		2%
<b>Other</b>	1	1	0%
<b>Total</b>	<b>2676</b>	<b>50</b>	

Note: Refer Section 27C(4)(c) of the *Workplace Injury Management and Workers Compensation Act 1998*.



Figure A5 | Complaints Received by Injury Type

Body Location	Number	%
Ankle	40	2%
Arm	28	2%
Back	471	28%
Elbow	28	2%
Feet	37	2%
Hand	62	4%
Head Injury - Other	83	5%
Hearing Loss	32	2%
Internal body systems	6	0%
Knee	178	11%
Leg	34	2%
Multiple Body Locations	39	2%
Neck	99	6%
Psychological	253	15%
Shoulder	201	12%
Trunk	39	2%
Wrist	58	3%
<b>Total</b>	<b>1688</b>	

*Note: approx. 1000 complaints did not identify their injury*

**Figure A6 | Time taken to resolve complaints – by type of complaint**

<b>Issue of Complaint</b>	<b>Same day</b>	<b>Next day</b>	<b>2 to 7 days</b>	<b>8 to 15 days</b>	<b>16 to 30 days</b>	<b>more than 30 days</b>	<b>Grand Total</b>
<b>Communication</b>	10	16	135	57	18		<b>236</b>
<b>Delay</b>	15	17	208	110	41	5	<b>396</b>
<b>Denial of Liability</b>	4	8	115	65	25	2	<b>219</b>
<b>IME</b>	3	7	34	20	4	1	<b>69</b>
<b>Medical treatment</b>	17	20	320	173	67	7	<b>604</b>
<b>Rehabilitation</b>	6	6	73	49	17		<b>151</b>
<b>Weekly Benefits</b>	26	37	396	231	135	17	<b>842</b>
<b>Work Capacity (general)</b>	7	7	38	28	11		<b>91</b>
<b>WPI</b>	2	2	39	19	5		<b>67</b>
<b>Other</b>			1				<b>1</b>
							<b>0</b>
<b>Grand Total</b>	<b>90</b>	<b>120</b>	<b>1359</b>	<b>752</b>	<b>323</b>	<b>32</b>	<b>2676</b>
<b>%</b>	<b>3%</b>	<b>4%</b>	<b>51%</b>	<b>28%</b>	<b>12%</b>	<b>1%</b>	

Note: Last year 45 (3%) of matters took over 30 days to Resolve:  
Refer Section 27C(4)(c) of the *Workplace Injury Management and Workers Compensation Act 1998*.

**Figure A7 | How people have heard about us (the source of the complaint)**

Referral source	No.	%
Lawyer	1655	62%
WorkCover	190	7%
Web search	187	7%
Insurer	145	5%
Specific source not stated	128	5%
Word of Mouth	119	4%
Union	92	3%
Doctor	56	2%
Workers Compensation Commission	33	1%
Government Department	20	1%
Rehabilitation Provider	19	1%
WIRO Campaign	16	1%
Employer	7	0%
<b>Total</b>	<b>2666</b>	

Note:

These figures are for complaints received from 1 July 2014 to 30 June 2015.

Refer Section 27C(4)(c) of the *Workplace Injury Management and Compensation Act 1998*.

Although WIRO's functions are well known to the legal community there is not the same understanding among other stakeholders.

Figure B1 | Matters Received per Insurer

Insurer	Complaint	Enquiry	ILARS	WCDR	Grand Total
<b>Scheme agent</b>	<b>1947</b>	<b>1311</b>	<b>7474</b>	<b>209</b>	<b>10941</b>
Allianz Australia Workers Compensation (NSW) Ltd	447	308	1848	67	2670
CGU Workers Compensation (NSW) Ltd	305	174	1002	32	1513
Employers Mutual NSW Limited	267	169	877	39	1352
Gallagher Bassett Services Pty Ltd	204	113	350	21	688
GIO General Limited	257	180	1138	13	1588
QBE Workers' Compensation (NSW) Ltd	387	314	1977	31	2709
Xchanging	80	53	282	6	421
<b>Self-insured</b>	<b>213</b>	<b>123</b>	<b>905</b>	<b>19</b>	<b>1260</b>
ANZ Group	2	3	5		10
Arrium Limited	6	1	21		28
Ausgrid	5	4	21		30
Bankstown City Council		1	4		5
BHP Billiton			2		2
Blacktown City Council	1		11		12
Bluescope Steel Ltd	2	3	72	1	78
BOC Workers' Compensation Ltd.	1		2		3
Brambles Insurance Services	1		4		5
Brickworks Ltd			2		2
Campbelltown City Council	1	2	4		7
City of Sydney Council			15		15

<b>Insurer</b>	<b>Complaint</b>	<b>Enquiry</b>	<b>ILARS</b>	<b>WCDR</b>	<b>Grand Total</b>
<b>Coles Group Ltd</b>	32	15	143	1	191
<b>Colin Joss &amp; Co Pty Limited</b>	1		3		4
<b>CSR Limited</b>	1	2	13		16
<b>Delta Electricity</b>		1	4		5
<b>Electrolux Home Products Pty Ltd</b>	1		4		5
<b>Endeavour Energy</b>	1	1	11		13
<b>Fairfield City Council</b>	1		6		7
<b>Gosford City Council</b>			5		5
<b>Holcim (Aust) Holdings Pty Limited</b>		1	6		7
<b>Inghams Enterprises Pty Ltd</b>	3	1	18		22
<b>ISS Property Services Pty Ltd</b>	1	3	24		28
<b>Johnson &amp; Johnson Pty Ltd</b>			1		1
<b>Lake Macquarie City Council</b>	1	1	11	1	14
<b>Liverpool City Council</b>			5		5
<b>MARS Australia Pty Ltd</b>		1		1	2
<b>McDonald's Australia Holdings Ltd</b>	1	1	5		7
<b>Myer Holdings Ltd</b>		1	6		7
<b>Newcastle City Council</b>		2	9	1	12
<b>Northern Co-Operative Meat Company Limited</b>	3	1	1	1	6
<b>NSW Trains</b>			12		12
<b>Pacific National (NSW) Pty Ltd</b>	3		5		8
<b>Pasminco Ltd</b>		1	2		3
<b>Primary Health Care Limited</b>			7		7
<b>Qantas Airways Limited</b>	9	7	96	1	113
<b>Rail Corporation NSW</b>	20	18	67	2	107

WIRO ANNUAL REPORT 2015

<b>Insurer</b>	<b>Complaint</b>	<b>Enquiry</b>	<b>ILARS</b>	<b>WCDR</b>	<b>Grand Total</b>
Rocla Pty Limited	2		5	1	8
Shellharbour City Council			1		1
Shoalhaven City Council	2	2	9		13
Skilled Group Limited	5	3	12		20
Southern Meats Pty Ltd.			1		1
State Transit Authority (STA)	8	2	27	2	39
Sutherland Shire Council		1	6	1	8
Sydney Trains	1	1	10		12
Sydney Water Corporation			18		18
The Star Pty Ltd	4		9		13
Toll Pty Ltd	4	1	40	1	46
Transfield Services (Australia) Pty Ltd	12	12	23	2	49
UGL Rail Services Limited	1		6		7
Unilever Australia (Holdings) Pty Limited			3		3
University of New South Wales	1	3	6		10
Veolia Environmental Services (Australia) Pty Ltd	2		4		6
Warringah Council	1	1	3		5
Westpac Banking Corporation Ltd	1		18		19
Wollongong City Council	5		8		13
Woolworths Limited	66	26	61	3	156
Wyong Shire Council	1		8		9
<b>Specialised insurer</b>	<b>82</b>	<b>60</b>	<b>392</b>	<b>5</b>	<b>539</b>
<b>ACE Insurance Limited</b>	<b>34</b>	<b>24</b>	<b>107</b>	<b>4</b>	<b>169</b>

WIRO ANNUAL REPORT 2015

Insurer	Complaint	Enquiry	ILARS	WCDR	Grand Total
Catholic Church Insurance	7	3	31		41
Club Employers Mutual (part of Hospitality Employers Mutual)	6	4	9		19
Coal Mines Insurance Pty Limited			10		10
Guild Insurance Ltd	7	6	19		32
Hotel Employers Mutual (part of Hospitality Employers Mutual)	10	7	44		61
Racing NSW Insurance Fund	4	4	20	1	29
StateCover Mutual Ltd	14	12	152		178
<b>TMF</b>	<b>415</b>	<b>175</b>	<b>813</b>	<b>35</b>	<b>1438</b>
Allianz TMF	125	69	296	13	503
Employers Mutual NSW - TMF	138	46	287	16	487
QBE TMF	152	60	230	6	448
<b>Other</b>	<b>8</b>	<b>530</b>	<b>1470</b>	<b>0</b>	<b>2008</b>
WorkCover ULIS	4	14	35		53
Enquiries Not provided		514			514
Not Provided (Hearing Loss)	5		1448		1453
Other insurer		1	13		14
<b>Grand Total</b>	<b>2666</b>	<b>2198</b>	<b>11080</b>	<b>268</b>	<b>16212</b>

Note: These figures are for cases opened during the financial year.

Figure B2 | Issues raised with us

Issue	Complaint		Enquiry		ILARS		Total	Total %
	No. of cases	%	No. of cases	%	No. of cases	%		
Communication	232	8%	223	10%	0	0%	455	3%
Commutation	0	0%	0	0%	35	0%	35	0%
Death Claim	0	0%	0	0%	83	1%	83	1%
Delay	397	13%	51	2%	0	0%	448	3%
Denial of Liability	252	8%	583	26%	3084	28%	3919	24%
Independent Medical Examination	67	2%	42	2%	0	0%	109	1%
Medical treatment	652	14%	300	14%	1422	13%	2374	15%
Rehabilitation	151	5%	96	4%	0	0%	247	2%
Weekly Benefits	860	28%	372	17%	344	3%	1576	10%
Work Capacity (general)	92	3%	399	18%	0	0%	491	3%
WPI	353	12%	129	6%	6053	55%	6535	40%
Other	1	0%	6	0%	5	0%	12	0%
<b>Grand Total</b>	<b>3057</b>	<b>92%</b>	<b>2201</b>	<b>100%</b>	<b>11026</b>	<b>100%</b>	<b>16284</b>	<b>100%</b>

Note: There can be more than one issue per case.



**Figure C1 | Number of matters processed by ILARS**

Status	Number	Monthly Average	%
Accepted	9686	807	87%
Declined	600	50	5%
Awaiting decision	794	66	7%
<b>Grand Total</b>	<b>11080</b>	<b>923</b>	

Note: Data as at 2 July 2015 so large number of pending matters from June.

**Figure C2 | ILARS – Where was the worker injured**

Injury Type	Grand Total	%
<b>31 Back</b>	2766	25%
<b>13 Ear</b>	2599	23%
<b>80 Psychological system</b>	1182	11%
<b>41 Shoulder</b>	1033	9%
<b>53 Knee</b>	811	7%
<b>21 Neck</b>	454	4%
<b>45 Wrist</b>	240	2%
<b>46 Hand, fingers and thumb</b>	239	2%
<b>55 Ankle</b>	203	2%
<b>54 Lower leg</b>	138	1%
<b>42 Upper arm</b>	131	1%
<b>51 Hip</b>	126	1%
<b>56 Foot and toes</b>	114	1%
<b>68 Multiple -Other</b>	103	1%

Injury Type	Grand Total	%
43 Elbow	98	1%
18 Head - multiple locations	85	1%
91 Death	82	1%
64 Multiple -Trunk and limbs	63	1%
34/35 Abdomen and pelvic region	57	1%
48 Upper limb - multiple locations	54	0%
90 Unspecified locations	53	0%
12 Eye	50	0%
Other Body Locations *	399	4%
<b>Grand Total</b>	<b>11080</b>	

\* 'Other body locations' includes all cases where there have been less than 50 occurrences.

Figure C3 | ILARS – Payments from ILARS to ILARS Lawyers by Insurer Type

Insurer Type	12-13	13-14	14-15	Grand Total
Scheme agent	\$ 912,043.46	\$ 15,955,619.68	\$ 33,243,906.25	\$ 50,111,569.39
Self-insured	\$ 159,439.54	\$ 2,590,959.25	\$ 4,905,250.79	\$ 7,655,649.58
Specialised insurer	\$ 54,579.43	\$ 638,798.85	\$ 1,667,964.13	\$ 2,361,342.41
TMF	\$ 58,882.32	\$ 1,710,123.79	\$ 4,182,053.08	\$ 5,951,059.19
Other insurers	\$ 74,570.85	\$ 396,744.81	\$ 446,332.33	\$ 917,647.99
<b>Grand Total</b>	<b>\$1,259,515.60</b>	<b>\$ 21,292,246.38</b>	<b>\$ 44,445,506.58</b>	<b>\$66,997,268.56</b>

**Figure C4 | ILARS – Payments from ILARS to Law Firms**

<b>Number of Law Firms</b>	<b>12-13</b>	<b>13-14</b>	<b>14-15</b>	<b>Grand Total</b>
<b>Top 3</b>	\$ 411,390	\$ 7,198,019	\$ 10,719,340	\$ 18,328,750
<b>Nos 4 to 10</b>	\$ 290,752	\$ 5,017,994	\$ 9,844,084	\$ 15,152,829
<b>Nos 11 to 20</b>	\$ 131,266	\$ 2,289,832	\$ 6,873,017	\$ 9,294,115
<b>Nos 21 to 50</b>	\$ 190,216	\$ 3,126,479	\$ 8,514,270	\$ 11,830,964
<b>Nos 51 to 100</b>	\$ 171,508	\$ 2,401,079	\$ 5,126,215	\$ 7,698,801
<b>Remaining firms</b>	\$ 64,384	\$ 1,258,844	\$ 3,368,581	\$ 4,691,808
<b>Total</b>	<b>\$ 1,259,516</b>	<b>\$ 21,292,246</b>	<b>\$ 44,445,507</b>	<b>\$ 66,997,269</b>

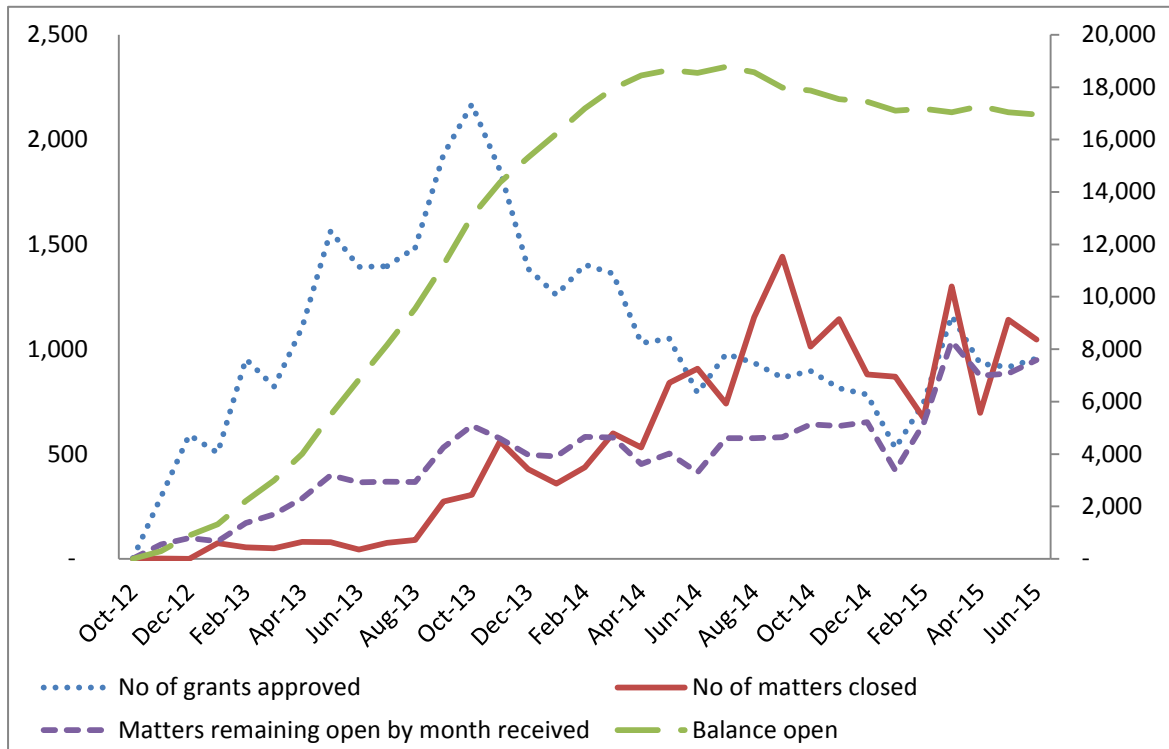
Figure C5 | ILARS – What is the ILARS grants spent on

Payment Type	Total amount	Number of payments	% of disbursements	Average amount
<b>Professional fees</b>	\$34,129,429	10,322		\$3,306
<b>Medico-legal</b>	\$7,935,693	7,301	77%	\$1,087
<b>Barrister Fees</b>	\$1,716,576	1,311	17%	\$1,309
<b>Clinical Notes</b>	\$234,227	1,519	2%	\$154
<b>Travel</b>	\$127,727	407	1%	\$314
<b>Barrister Country Loading</b>	\$127,281	204	1%	\$625
<b>NTD Report</b>	\$53,617	96	1%	\$556
<b>Treating Specialist Report</b>	\$53,324	100	1%	\$535
<b>Interpreter</b>	\$46,024	241	0%	\$191
<b>Other</b>	\$19,181	63	0%	\$305
<b>Meal Allowance</b>	\$2,427	23	0%	\$107
<b>Grand Total</b>	<b>\$44,445,507</b>	<b>21,587</b>		

Note:

Data is for payments made between 1 July 2014 and 30 June 2015.

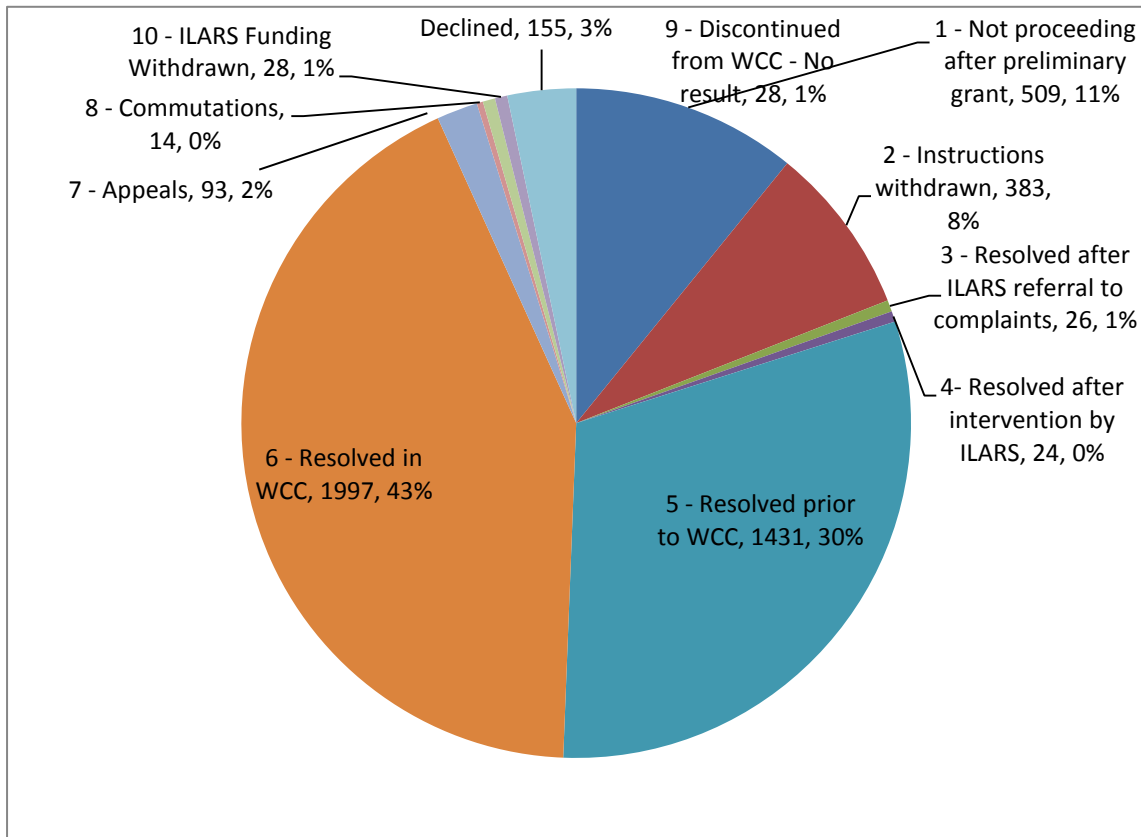
Figure C6 | ILARS – Matters open and closed



Note: This chart shows: (anti-clockwise from top left)

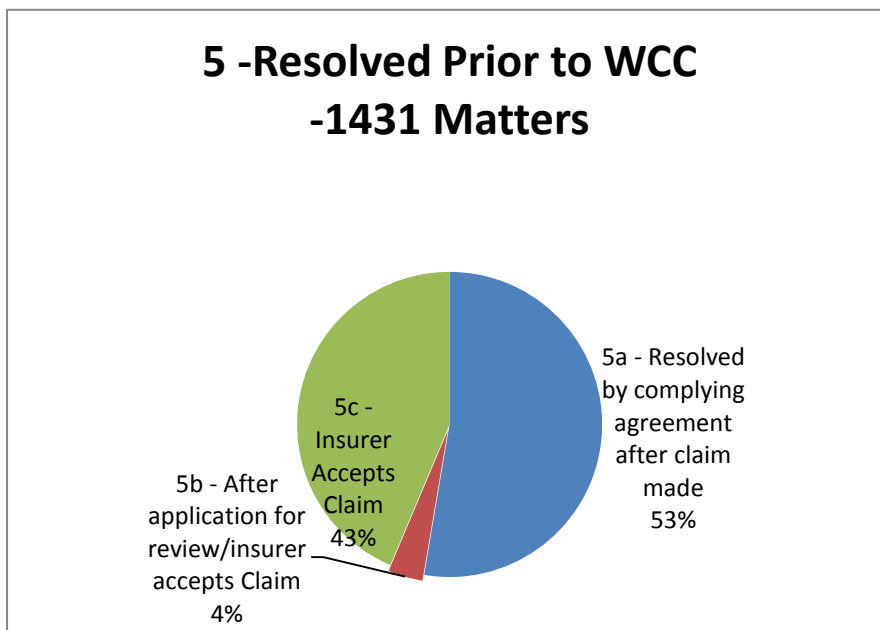
- The number of grants for legal funding made each month on the left hand scale.
- The number of matters remaining open at as 30 June 2015 that were received in that month on the left hand scale.
- The number of matters closed each month on the left hand scale.
- The number of matters remaining open (WIP) on the right hand scale.

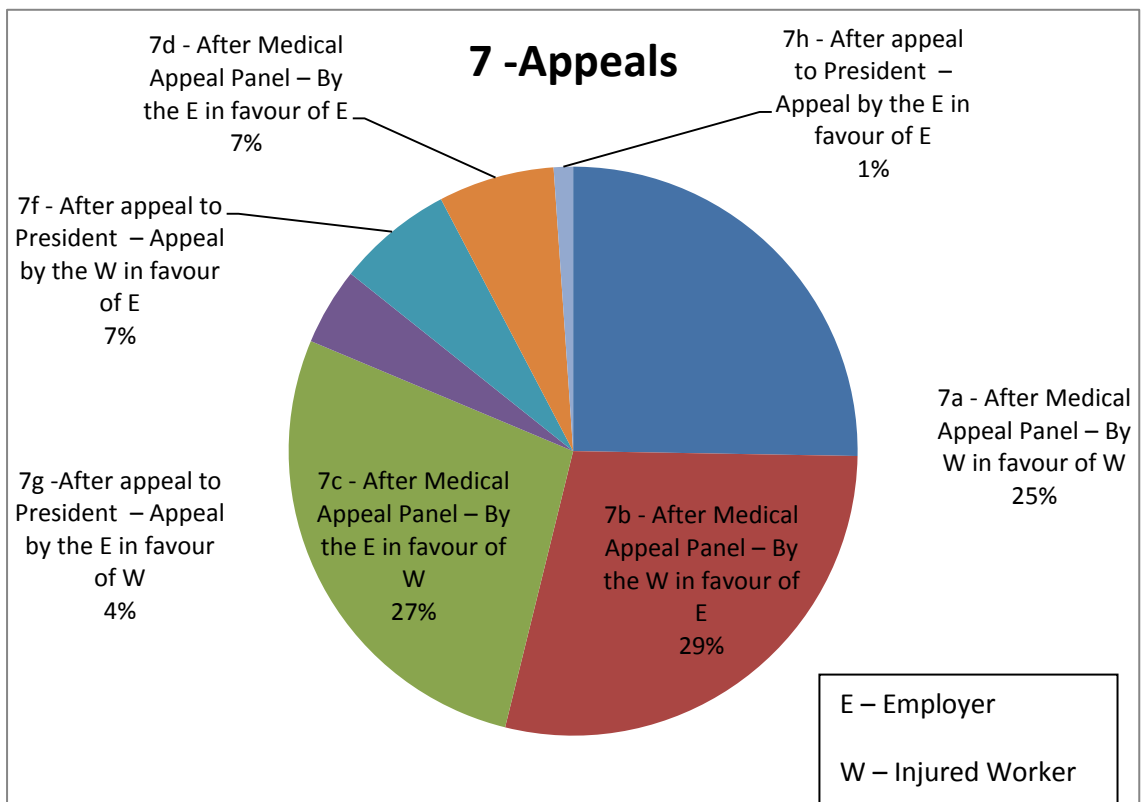
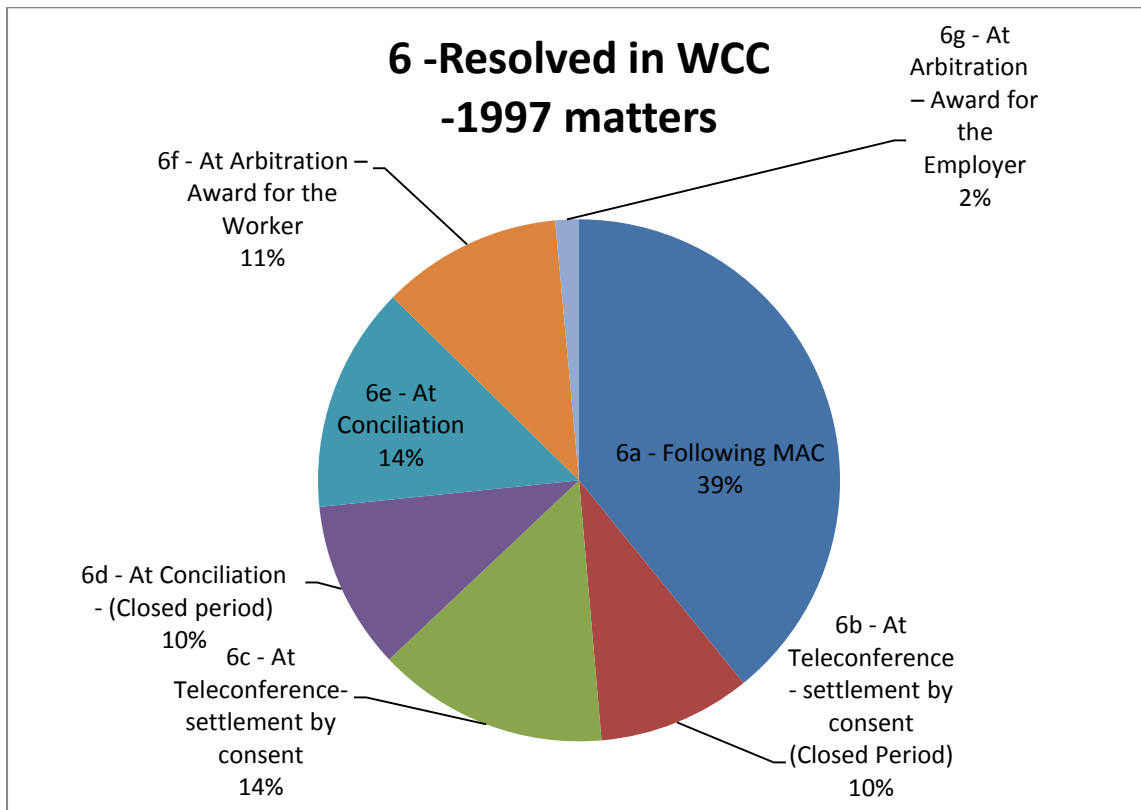
Figure C7 | ILARS – ILARS Outcomes



Note: Data is from 4528 cases closed from 1 Jan to 30 June 2015

Figure C8 | ILARS – ILARS Outcomes breakdown





**Figure C9 | ILARS – Average Disbursements and Professional Fees for each Outcome from 1 Jan 15 to 30 June 15.**

<b>Primary Outcome</b>	<b>Average of Disbursement fees</b>	<b>Average of Professional fees</b>	<b>Average of Total fees</b>	<b>Number of matters</b>
<b>1 - Not proceeding after preliminary grant</b>	\$1,041.74	\$1,497.33	\$2,539.07	450
<b>2 - Instructions withdrawn</b>	\$641.30	\$1,409.98	\$2,051.29	237
<b>3 - Resolved after ILARS referral to complaints</b>	\$348.46	\$1,124.13	\$1,472.59	10
<b>4 - Resolved after Intervention by PG</b>	\$845.23	\$2,063.90	\$2,909.12	23
<b>5 - Resolved prior to WCC</b>	\$929.57	\$2,379.41	\$3,308.98	1303
<b>6 - Resolved in WCC</b>	\$1,446.57	\$5,852.82	\$7,299.40	1944
<b>7 - Appeals</b>	\$1,013.57	\$5,955.66	\$6,969.23	72
<b>8 - Commutations</b>	\$287.84	\$3,115.25	\$3,403.08	17
<b>9 - Discontinued from WCC - No result</b>	\$1,113.19	\$4,214.80	\$5,327.99	30
<b>Declined</b>	\$796.06	\$3,231.77	\$4,027.82	22
<b>Grand Total</b>	<b>\$1,167.44</b>	<b>\$3,949.43</b>	<b>\$5,116.87</b>	<b>4108</b>



## **APPENDIX 2 – CASE STUDIES**

### **Getting a response to a claim**

The lawyer for the injured worker emailed WIRO stating the Insurer had not responded to a claim made several months ago. WIRO contacted the insurer and received a response that day apologising for the delay and stating the matter had simply been overlooked. The claim was immediately approved and the worker received hearing aids.

### **Clarifying the correct weekly entitlement**

An injured worker contacted WIRO saying that the insurer had recently reduced her weekly payments as she was no longer entitled to have overtime and shift allowance factored into her weekly payments. The worker maintained that she fell under an enterprise bargaining agreement that stipulated a standard 42 hour week at a flat rate with no overtime or allowances. Upon WIRO drawing this to the attention of the insurer they agreed to correct the calculation.

### **Arranging a suitable medical appointment**

The Insurer arranged a medical appointment in Sydney for an injured worker who lived over two hours' drive away. The worker advised the insurer that she could not attend the appointment as it was too far from her home. She said she would be willing to attend if an appointment could be in Newcastle. After WIRO intervened the insurer arranged a new appointment that the worker was happy to attend.

### **Extending the time to seek review of a Work Capacity Decision**

WIRO received a call from an injured worker stating that he had not received his work capacity decision until six weeks after the insurer stated they had sent it. This meant that the worker was out of time to seek review of the decision. Despite maintaining the decision had been sent 6 weeks earlier, the insurer agreed to extend the notice period so that the injured worker could seek a review of the decision.

### **Helping the insurer get the correct medical information**

The union for an injured worker contacted WIRO to complain that the insurer was delaying accepting liability. The insurer had issued a letter reasonably excusing itself from provisionally accepting liability because insufficient medical information had been provided and asserting that the injury was not work related. The union believed these concerns had already been answered. The insurer responded to WIRO's inquiry stating they were still waiting to receive a medical certificate and claim form. The union arranged for a medical certificate to be provided along with a fax transmission report confirming the insurer had received the claim form to the correct fax number. The insurer subsequently accepted the claim.

### **Getting reimbursement from Medicare**

When a claim for lump sum compensation for permanent impairment is settled, 10% of the settlement amount is held aside to reimburse Medicare for any rebates incurred in relation to medical treatment up until the time of settlement. The worker complained of delay in repaying him this 10% less any amount owed to Medicare. Upon WIRO raising this issue, the insurer discovered that it had failed to notify Medicare of the settlement of the dispute. Once this was rectified the worker was paid.

### **Engineering a welcome compromise**

A worker complained that his insurer had declined to meet the cost of attending his surgeon because under workers compensation legislation medical expenses are only met for a year after workers cease being entitled to weekly payments. The worker said he was not advised of the date of his entitlement to benefits ceasing until after he had made the appointment. The insurer agreed in the circumstances it was reasonable to meet the expenses.

### **Negotiating between the worker, insurer and employer**

An injured worker contacted WIRO in relation to a foot injury. The worker claimed that he was forced by the employer to work full duties for approximately 10 months with his injury. After WIRO intervened, the insurer and the employer worked together with a rehabilitation provider to conduct a work site assessment and produce a suitable duties plan.

### **A new medical appointment**

WIRO received a complaint from an injured worker that his insurer had suspended his weekly payments because he had failed to attend a medical examination in relation to his workplace injury. His car had broken down on the way to the appointment and he notified the insurer immediately. The insurer agreed to reschedule the appointment but still suspended payments despite the worker providing dated receipts for the tow truck and mechanic. WIRO's intervention led the insurer to reinstate payments from the date of the missed appointment.

### **Resolving a breakdown in communication**

A frustrated injured worker contacted WIRO because he had been unable to resolve his claim for arrears of weekly payments with his insurer. He told WIRO that he had been underpaid since his date of injury, a period of more than nine months. When WIRO inquired we discovered that the claim had been transferred to another insurer without the original insurer dealing with the problem and without telling the worker. WIRO was able to have the new insurer solve the dispute by quickly paying the worker more than \$5,000 in back pay.

### **Help for a seriously injured worker overseas**

A lawyer contacted WIRO to say that his client was a seriously injured worker with a previous award from the Workers Compensation Commission for permanent physical impairment. This entitled him to payment of weekly benefits. The worker was residing overseas and was not being paid benefits. His lawyer argued that the fact that the worker was overseas did not change the fact that he was entitled to benefits as he was a seriously injured worker. The insurer agreed when WIRO raised the matter.

### **Improving processes and relationships**

A worker complained to WIRO that his weekly benefits were frequently paid late. The Insurer acknowledged to WIRO that the payments had been delayed on three occasions due to problems with the insurer's payments system. WIRO requested automatic payments in order to prevent further delays. The Insurer advised that this is not possible. However in order to resolve the issue, the insurer offered to process the particular worker's payments one day earlier in order to ensure the funds were received on time.

### **Clarifying what is needed for payment to be made**

A lawyer for an injured worker advised WIRO that the insurer had accepted the claim but not paid any weekly payments to his client. The insurer responded to WIRO's enquiry and advised that the delay was because the worker had not submitted up to date medical certificates while absent from work. After WIRO informed the lawyer that he would need to obtain these certificates and these were provided to the insurer the worker was promptly paid.

### **Obtaining a quick response for a seriously injured worker**

After a workplace incident, the injured worker had a claim for very serious facial and bodily disfigurement. A claim was made by her lawyer but the insurer failed to respond within the prescribed time limits. The Complaints Group contacted the insurer and within 24 hours the insurer advised that the claim had been accepted. The insurer accepted the medical evidence and the worker received over \$120,000 for her claim.

### **Avoiding litigation in the Commission**

The injured worker's lawyer had requested funding from ILARS to proceed to the Workers Compensation Commission as the insurer had failed to respond to a claim for permanent impairment. Tragically the worker was a total quadriplegic following a fall on a building site. The Complaints Group contacted the insurer who responded stating that following an internal review and consultation with WorkCover, the worker's claim had been accepted and he received the maximum amount allowable under the legislation.

### **Ensuring payment amounts are correct**

When an injured worker complained to WIRO that indexation had not been applied to her weekly payments over the previous 12 months. WIRO raised the matter with the insurer and an immediate payment was made.

### **A proactive response from the Complaints Group**

WIRO provided a grant of funding to an injured worker to pursue a claim for lump sum permanent impairment. The worker had also been in receipt of weekly payments and upon looking over the matter a WIRO staff member became concerned that the worker was not in receipt of the correct weekly amount. On its own initiative WIRO contacted the insurer and ask them if the worker was being paid the correct amount of. The insurer was able to assure WIRO that the benefits were correct but had also discovered that the worker had not been paid 4 months' of weekly benefits because of an administrative oversight. The payment was processed that day

### **Addressing procedural issues with medical reports**

A worker complained to WIRO that her insurer had refused to approve surgery. WIRO discovered that the request for surgery had been made several months earlier. The worker had then been required to go to two medical examiners nominated by the insurer. The first medical examiner agreed the worker needed surgery whereupon the insurer sought the opinion of a second doctor who did not agree. The worker's doctor maintained surgery was required and the worker complained about the conduct of the second examiner. When WIRO raised the complaint about delay and the conduct of the second examiner with the insurer, the surgery was approved.

## APPENDIX 3 – STAKEHOLDER ENGAGEMENT

<i>Date</i>	<i>Stakeholder and Event</i>
<b>2014</b>	
<b>July</b>	
2 July	Presentation by Unity 4
4 July	Address Office of Finance and Services (OFS) Seminar
7 July	Meeting with Unions NSW
9 July	Meeting with Applicants Lawyers
15 July	Meeting with CIE & Office of Finance and Services
16 July	Meeting Merit Review Service & WIRO
16 July	Meeting with Minister
23 July	Presentation to Carroll & O'Dea
23 July	Meeting with Price Waterhouse Coopers
28- 30 July	Attend Return to Work Conference
31 July	Meeting with State Property
<b>August</b>	
6 August	Address Independent Medical Opinions Seminar
7 August	Address GIO Case Managers
7 August	Meeting with Senior Lawyers - Law Society
12 August	Meeting with National Union of Workers
14 August	Meeting with Injured Persons Support Network
14 August	Address City of Sydney Law Society Seminar
19 August	Meeting with Professor C McMahon
25 August	Address College of Law Seminar
25 August	Address Allianz case managers
29 August	WIRO Seminar
<b>September</b>	
1 September	Meeting with Guild Insurance
3 September	Meeting with General Counsel, Sydney University
4 September	City of Sydney Law Society - Attorney General
4 September	Address AMA Forum for Doctors
5 September	Meeting with Professor McCluskey - Save the Sight Institute
8 September	Meeting with Employers Mutual Limited (EML)
17 September	Meeting with Chairman, Ramsay Group
18 September	Meeting with Employers Mutual Limited
29 September	Attend 100th Annual Conference, IAIABC
<b>October</b>	
16 October	Attend Legal Stakeholders Reference Group
16 October	Address EML/Woolworths
16 October	Attend meeting of Law Society Workers Compensation

	Committee
17 October	Meeting with Qantas
20 October	Meeting with Sasha Holley - Macquarie University
23 October	Meeting with Chairman, SRWS Board
27 October	Meeting with CEO, EML
28 October	Meeting with EML
29 October	Meeting with Nikki Brouwers - Interact
<b>November</b>	
3 November	Meeting with Unions NSW
5 November	Meeting with General Counsel, Sydney University
6 November	Meeting with Minister
7 November	Meeting with Acting CEO, OFS
7 November	Meeting with Professor McCluskey - Save the Sight Institute
11 November	Address Konnect Conference
12 November	Meeting with Chairman. Maryland Workers Compensation Commission
12 November	Attend Legislative Assembly for Question Time
12 November	Attend City of Sydney Law Society Annual Dinner
13 November	Attend Lifeline Special Event
17 November	Attend International Forum on Disability Management Conference
18 November	Attend IFDM Conference
24 November	Meeting with President, Workers Compensation Commission
24 November	Meeting with Andrew Vasko, Konnect
27 November	Meeting with Audiologist
<b>December</b>	
2 December	Meeting with Allianz
3 December	Meeting with CEO, Law Society NSW
11 December	Address Active OHS
17 December	Meeting with CEO, SRWSD
<b>2015</b>	
15 January	Meeting with GIO
22 January	Meeting with President Law Society
23 January	Parkes Working Group
28 January	Meeting with Allianz
<b>February</b>	
3 February	Meeting with Secretary, Public Service Association
6 February	Parkes Advisory Committee
10 February	Meeting with PWC
10 February	Meeting with United Healthcare Group
17 February	Meeting with CGU
18 February	Attend Legal Stakeholders Consulting Group
20 February	WIRO Seminar
24 February	WorkCover Return to Work Guidelines consultation

25 February	Meeting with Allianz
26 February	Meeting with Personal Injury Education Foundation Conference
27 February	Parkes Advisory Committee
<b>March</b>	
2 March	Meet with NSW Treasury Insurance Review Consultants
2 March	Meeting with Unions NSW delegates
5 March	Meeting with Australian Manufacturing Workers Union
6 March	Meeting with National Union Workers
6 March	Attend launch of Macquarie University Report
9 March	Meeting with M Siomiak - Allianz
11 March	Meeting with McNally Jones Staff
18 March	Parkes Working Group
19 March	Meeting with Senator Sinodinos
20 March	Parkes Advisory Committee
24 March	Address StateCover Mutual Conference
25 March	Address StateCover Mutual Conference
27 March	Address Australian Lawyers Alliance Conference
<b>April</b>	
15 April	Parkes Working Group
17 April	Parkes Advisory Committee
20 April	Presentation at Personal Injury Education Foundation Conference
22 April	Parkes Working Group
28 April	International Day of Mourning Event
29 April	Parkes Working Group
30 April	Meeting with EML
<b>May</b>	
4 May	Meeting with EML
5-6 May	Conference attendance – Burswood Western Australia – Injury Management 2015
7 May	Meeting with Policy Adviser - Minister for Social Security (Fed)
15 May	Parkes Advisory Committee
18 May	Presentation at Greens Parliamentary Forum
20 May	Parkes Working Group
22 May	Presentation at College of Law Specialist Conference
27 May	Meeting with ENT Specialists about Hearing Loss Inquiry
27 May	Parkes Working Group
29 May	Parkes Advisory Committee
29 May	Meeting with Chief Judge, District Court
<b>June</b>	
3 June	Meeting with Allianz
4 June	Meeting with an Employer to review Complaint

WIRO ANNUAL REPORT 2015

4 June	Meeting with Lawyers about Costs Review
17 June	Presentation to Labor Party Forum on Workers Compensation
22 June	Meeting with Respondent Lawyers
24 June	Parkes Advisory Committee
30 June	Attend Court of Appeal Hearing - Cram Fluid v Green