



Practice Note TITLE	Requirements for the approval and payment of Stage 1 funding
ILARS Guideline reference	2.8, 3.1.1, 3.1.2.1, 3.1.2.2, 3.1.3.1, 3.1.3.2, 3.1.4 & 3.1.5.
Published Date	19 th November 2024
Version	1

Purpose

This Practice Note provides guidance on the practice and implementation of clause 3.1 of the ILARS Funding Guidelines (Guidelines) as it applies to the approval of Stage 1 funding.

This Practice Note includes:

- The operational rules and criteria for IRO to approve Stage 1 funding
- The information required to support a request for Stage 1 funding
- The procedure to be followed when requesting Stage 1 funding

Criteria, Practice and procedure

Criteria

IRO will generally approve Stage 1 funding where the Approved Lawyer:

- Is instructed by an **eligible worker**
- Has signed the consent and declaration form to the Application Form and completed the mandatory information in the Form
- Has confirmed they have asked their client whether any other Approved Lawyer has been instructed or retained to provide assistance or to seek a grant of funding in relation to their workers compensation matter with respect to the injuries the subject of the grant.
- Has otherwise satisfied the requirements of the Guidelines in relation to Stage 1 funding.

Eligible Workers are defined in clause 1.5 of the Guidelines.

Funding is available to enable an Approved Lawyer to:

- Confer with and obtain instructions from an injured eligible worker
- Provide the injured worker with comprehensive legal advice
- Advise on an insurer's decision
- Conduct early enquiries (including obtaining information from the insurer, if relevant) and responding to a request for further information
- Commence investigations of any potential claim (including completing an injured worker's injury claim form on behalf of an injured worker and providing legal advice about the resultant decision of the insurer)
- Assess the prospects of disputing an insurer's decision
- Explore and achieve early solutions.

This list is not intended to be exclusive or exhaustive (clause 3.1.1).

Practice

The Approved Lawyer should provide an explanation or short reasons referring to any evidence or material available which supports the request for funding.

Approved Lawyers should consider clause 3.1.2.2 of the Guidelines where there has been a **previous grant of funding to another Approved Lawyer and the matter is closed**. Where an injured worker has been the beneficiary of Stage 1 funding and the grant has been **paid** to the original lawyer, and a new Approved Lawyer seeks a grant of funding to assist the injured worker, the IRO will deal with the matter in accordance with the principles outlined in clause 2.9 of the Guidelines.

Generally, the new Approved Lawyer will **not** be entitled to any professional fees at Stage 1, where Stage 1 has been **paid** to the original Lawyer and the subject matter of the grant is the same.

The new Approved Lawyer will need to establish they assisted the injured worker regarding a **new issue** which did not form part of the first grant of funding for professional fees to be paid to the new Approved Lawyer.

Where a new Lawyer is retained in an existing matter.

Costs will be apportioned between Approved Lawyers under clause 2.9.2.

Generally, the total legal costs paid to both Lawyers will **not exceed** the amount that would have been paid had the injured worker instructed only one Lawyer in the grant matter. Apportionment will be made on a case-by-case basis depending on the circumstances of the matter. Generally, the first Approved Lawyer will be paid the full fees under Stage 1 if they have provided the services set out in clause 3.1.1 to the injured worker before losing instructions.

Where, as a result of the assistance provided by the new Lawyer, the grant **proceeds to further stages**, an assessment will be made at the closure of the grant as to whether any funding should be provided for Stage 1 work undertaken by the new Lawyer, or whether the Stage 1 fees paid to the original Lawyer will be deducted from the fees payable (see also clause 4.1.4.2).

Approved Lawyers making concurrent applications

Where a concurrent application for Stage 1 funding is made by an Approved Lawyer, consideration will be given to clause 2.8 of the ILARS Funding Guidelines. Approved Lawyers are expected to provide legal assistance with respect to a **specific** issue(s) for which the grant has been made and the injured worker's rights to workers compensation benefits (and attendant obligations) **generally**. A further grant is not required in order that the Approved Lawyer canvass and advise the injured worker on new or emerging issues related to that injury or that claim.

If a grant has been re-activated and IRO assesses that the new issues that should have been included in the earlier grant of funding, any paid professional fees will generally be deducted from the professional fees payable at the closure of the grant (clauses 3.1.4 and 4.1.4.2).

Where the Approved Lawyer is unable to assist an injured worker, whether due to a conflict of interest, lack of resources, or for any other reasons, the Approved Lawyer should advise the injured worker and IRO as soon as possible and direct the injured worker to another Approved Lawyer. In these circumstances, **no** professional fees will be paid to the original Approved Lawyer (clause 3.1.3.2).

Stage 1 funding for disbursements (clause 3.1.5) is limited to:

- Health records
- Fees for an interpreter, if required.

Stage 1 funding is **not** available for **industrial deafness (hearing loss) matters** (clause 3.1.2.1).

Stage 1 funding is **not** available to provide advice on **work injury damages** claims (clause 2.10).

Should an Approved Lawyer require other disbursements then consideration should be given to applying for Stage 2 funding.

Where Stage 2 or higher funding is provided and IRO assesses that the work undertaken and the outcome achieved is work encompassed by Stage 1, Stage 1 fees only will be paid irrespective of the funding Stage provided.

Further, where stage 2 funding is sought and;

1. the merit test is not satisfied; and,
2. Stage 1 funding has not previously been provided

A grant of Stage 1 funding may be made, provided the criteria for Stage 1 funding is met.

Procedure

Applications

When completing the Application Form, Approved Lawyers must provide information including:

- The full name of the injured worker
- The employer name
- The occupation at the time of injury
- Body part and location and system to be assessed as a result of the injury
- How the injury occurred
- State the nature of injury eg fall, burn, disease
- Whether any other Approved Lawyer has been instructed or retained to provide assistance or to seek a grant of funding in relation to their workers compensation matter with respect to the injuries and the compensation rights of the injured worker the subject of the request for funding
- Brief details of the work contemplated
- Whether the work contemplated is different to assistance provided to the injured worker in any other grant provided for the benefit of the injured worker.

Approved Lawyers should ensure that the injured worker has **understood** and given **consent** to the Approved Lawyer seeking a grant of funding on their behalf.

Application Forms without sufficient information will not be assessed until the information is provided.

Invoicing

A tax invoice for Stage 1 **cannot** be rendered until the **expiry of three (3) months** from the provision of the initial comprehensive legal advice and only if **no further action** or assistance is proposed to be taken or provided for a period of **no less than** twelve (12) months. Confirmation is required from the **Approved Lawyer** (not their staff) to this effect at the time of providing a tax invoice. (clause 3.1.3.1)

When rendering an invoice, IRO requests a copy of the following to be submitted with the invoice:

- Comprehensive written legal advice to the injured worker,
- Where appropriate, claim form and acceptance from the insurer

Where written documentation is not available, IRO requires confirmation from the **Approved Lawyer** (not their staff) setting out the services provided to the injured worker under Stage 1.

Example

Stage 1 funding is appropriate where:

- the insurer has applied a **reasonable excuse**. IRO takes the view that where an insurer relies on a reasonable excuse this is a claims management issue that falls within Stage 1 funding.
- Stage 2 has been provided to assist an injured worker but the work undertaken falls within the ambit of Stage 1 funding, eg where stage 2 is provided to investigate a permanent impairment claim and medical information (other than health records) has not been obtained to commence investigations, and the injured worker withdraws instructions before the Approved Lawyer commences investigations.

Where a previous Stage 1 grant has been paid and closed, a new Stage 1 grant **may** be appropriate and previous fees not deducted where there is:

- A fresh dispute after an earlier grant has been closed
- A suspension of weekly payments that post-dates the earlier grant
- There has been a significant change in circumstances, such as:
 - A deterioration after a lump sum claim has been resolved but submissions will be required to support the need for a further advice
 - A significant amount of time has passed (several years) and the injured worker instructs a new Approved Lawyer where there may be a deterioration regarding the same injury.
 - Investigating a lump sum claim following resolution of a claim for surgery

An assessment will be made on a case-by-case basis.

IRO does not consider there to be a new issue for further Stage 1 funding where an Approved Lawyer seeks funding for:

- An updated advice when there has been no change in circumstances, or any new issues raised by the insurer
- An advice on indexation or other non-adverse decision or information issued by the insurer
- Where the injured worker has settled their claim, and appears to have no further entitlements

Multiple applications in the one grant

IRO will consider the work undertaken and the outcomes achieved in determining whether one or more grants of funding are appropriate to assist the injured worker. The assessment will usually occur at the end of the matter or where it becomes clear that the character or nature of the disputes are clearly different from the original funded dispute.

Generally, **one** grant of Stage 1 funding may be provided to canvass **multiple issues**. Clause 2.8 provides that IRO “may” make an additional grant if the matters are “so different” that a new grant “is appropriate”. Even where there are different dates of injury and some different body parts/systems affected, the work undertaken may not be so different that a separate grant is appropriate. It may be that the insurer is the same, the mechanisms of injury and the body systems involved are the same. Therefore, it may be reasonable to conduct the initial investigations and advice under one grant.

IRO’s starting position is generally that one grant of funding is sufficient at the initial stage to undertake work set out in clause 3.1.1. Depending on the circumstances, in particular the resolution pathways needed, more than one grant and one set of professional fees may be assessed as appropriate at the completion of the work undertaken.

The decision to maintain one grant of funding does not preclude a future assessment of your professional fees at the conclusion of the grant which, subject to the outcome achieved for the injured worker, may (in accordance with the Guidelines) result in a separate grant and additional professional fees.