

Federal Jurisdiction Funding Policy

This Policy sets out the approach of the Office of the Independent Review Officer (IRO) with respect to funding for Independent Legal Assistance and Review Service (ILARS) grants in matters affected by issues related to federal jurisdiction (federal jurisdiction matters).

This Policy will be subject to a review after twelve (12) months of operation. Review, amendment, or replacement of the Policy may occur at an earlier date at the discretion of the Independent Review Officer.

Background

The Australian Constitution (in Chapter 3) establishes the High Court of Australia (High Court) and provides that the High Court has original jurisdiction in all matters '*between States, or between residents of different States, or between a State and a resident of another State.*' The Constitution also provides for the Commonwealth Parliament to invest Commonwealth judicial power in such other courts as it invests with federal jurisdiction.

Section 39 of the *Judiciary Act 1903* (Cth) (Judiciary Act) provides for Courts of a State to be invested with federal jurisdiction in matters in which the High Court has original jurisdiction.

The Personal Injury Commission (PIC) is not a Court for the purposes of section 39 of the Judiciary Act. The PIC cannot determine an application if it would be required to exercise federal jurisdiction to make that determination. PIC matters affected by federal jurisdiction must be determined by the District Court of NSW.

Funding principles

IRO adopts and will apply the following funding principles to federal jurisdiction matters:

1. The *Federal Jurisdiction matters – Professional Fees and Disbursement Schedule* generally applies (see below).
2. The fees payable under the *Federal Jurisdiction matters – Professional Fees and Disbursement Schedule* are instead of (and not in addition to) items 3.1 to 4.4 of the Professional Fees Schedule in Part 6 of the ILARS Funding Guidelines.
3. Consistent with other matters funded by ILARS, legal advice and assistance to the worker should be at no cost to them.
4. Costs are payable for matters which are resolved on the basis of payment of statutory benefits only. No costs are payable for matters which resolve claims for damages, consistent with paragraph 2.10 of the ILARS Funding Guidelines.
5. IRO may seek a refund of legal costs or any part of the costs paid under the grant where a worker recovers costs in the District Court, consistent with paragraph 2.15 of the ILARS Funding Guidelines.
6. IRO retains an overarching discretion as to the professional fees paid and reimbursement of disbursements, consistent with paragraphs 4.1.3, 4.1.6 and 4.2.2.1 of the ILARS Funding Guidelines. This includes considering any decision or reasons of the Court in determining the matter.
7. IRO generally does not indemnify a worker where a costs order is made in favour of a Respondent/Defendant by the Court, consistent with paragraph 3.4.5.1 of the ILARS Funding Guidelines. IRO will consider meeting some or all of the costs where such an order is made, on a case-by-case basis, and after considering all the circumstances of the matter. Lawyers requesting that IRO meet these costs must

provide a written submission, attaching any relevant information (including the costs decision of the Court), and addressing why IRO should meet the costs order.

8. IRO will pay fees in federal jurisdiction matters at the conclusion of the legal relationship, or when a final outcome is achieved, consistent with paragraph 4.1.1 of the ILARS Funding Guidelines. Interim invoices may be considered prior to the conclusion of a funded matter in circumstances where there have been significant delays in the resolution of a claim or dispute as a result of the matter being a federal jurisdiction matter, consistent with paragraph 4.3.3 of the ILARS Funding Guidelines.

Federal Jurisdiction Matters – Professional Fees and Disbursement Schedule

Item	Description	Fees Payable
Federal Jurisdiction matters - Professional Fees Schedule		
Item 1	No Order by District Court for payment of the worker's costs (e.g. no order as to costs; costs order against the worker)	<p>Fees are payable in the sum of the following:</p> <ul style="list-style-type: none"> • Fee amounts are to be determined by Part 6 and any other relevant provisions of the ILARS Funding Guidelines, on a best equivalence basis (e.g. a matter that resolves on the basis of the Court determining all the issues in dispute following a hearing, will be entitled to item 3.7 in paragraph 6.3 of the ILARS Funding Guidelines - \$7,800). <p>PLUS</p> <ul style="list-style-type: none"> • If required, a complexity increase consistent with paragraph 4.1.6 of the ILARS Funding Guidelines will be applied - on the basis that the matter has involved significant additional work due to a federal jurisdiction issue. (This is a new and separate ground of complexity increase.) <p>The increase is to be determined on the basis of what is fair and reasonable for the professional services provided. Any professional fees sought are generally capped at the maximum daily rates payable under the Attorney General's rates for legal representation unless there are special circumstances.</p> <p>Lawyers seeking a complexity increase on this basis must provide evidence of the additional work required to deal with the federal jurisdiction issue.</p>
Item 2	Costs Order by District Court in favour of the worker	<p>If the professional fees recovered by the Approved Lawyer as result of the Court's Order are less than the amount which would have been payable under Item 1 of this table (e.g. because the costs Order of the Court does not encompass work undertaken by the lawyer that would otherwise be met under the ILARS Funding Guidelines), the IRO will consider an application for payment of additional professional fees, such that the total fees would be equivalent to those paid under Item 1.</p> <p>Similar requirements for evidence etc. apply to any such application.</p>
Federal Jurisdiction matters – Disbursements Schedule		
Item 3	Counsel's fees	Fees are reimbursed in the sum of the following:

		<ul style="list-style-type: none"> • Fee amounts are to be determined by paragraphs 4.2, 5.2, 6.4 and any other relevant provisions of the ILARS Funding Guidelines, on a best equivalence basis. <p>PLUS</p> <ul style="list-style-type: none"> • If required, an increase in fees on the basis that the matter has involved significant additional work due to a federal jurisdiction issue. <p>The increase is to be determined on the basis of what is fair and reasonable for the professional services provided. Any professional fees sought are generally capped at the maximum daily rates payable under the Attorney General's rates for legal representation unless there are special circumstances.</p> <p>Approved Lawyers seeking an increase for Counsel on this basis must provide evidence of the additional work required to deal with the federal jurisdiction issue.</p>
Item 4	Other disbursements	<p>Disbursements are reimbursed in accordance with the ILARS Funding Guidelines, and in particular Part 5.</p> <p>Where disbursements are incurred because a matter is a federal jurisdiction matter, and the disbursements do not fall within the scope of the ILARS Funding Guidelines, IRO will reimburse any additional, reasonably necessary disbursements including, but not limited to filing fees and hearing allocation fees (see the District Court website for relevant fees: Forms and fees (nsw.gov.au)).</p>