

Guideline for the  
Approval as an  
IRO Approved  
Lawyer

2021

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<b>Introduction</b> .....	<b>2</b>
Publication note .....	2
Legislative Framework .....	2
Guideline–making powers .....	2
Commencement .....	2
Interpretation of these Guidelines .....	2
Purpose of these Guidelines .....	2
Application of these Guidelines .....	3
Parts of these Guidelines .....	3
Compliance with these Guidelines .....	3
<b>1. Approval of Lawyers</b> .....	<b>4</b>
<b>1.1</b> General.....	4
<b>1.2</b> Application form .....	4
<b>1.3</b> Approval requirements .....	4
1.3.1 Eligibility criteria .....	4
1.3.1.1 Mandatory criteria .....	4
1.3.1.2 General Criteria.....	4
1.3.2 Restricted approval .....	4
<b>1.4</b> Effect of approval .....	5
<b>1.5</b> Continuing eligibility .....	5
<b>1.6</b> Deactivation and reactivation of approval.....	5
<b>2. Termination of approval as an IRO Approved Lawyer</b> .....	<b>6</b>
<b>2.1</b> Removal on request.....	6
<b>2.2</b> Reasons for termination of approval .....	6
<b>2.3</b> Notice before termination .....	6
<b>2.4</b> Conditional approval .....	7
<b>2.5</b> Effect of termination of approval.....	7
<b>2.6</b> Actions disallowed after termination of approval .....	7

# INTRODUCTION

## Publication note

These Guidelines are published by the Independent Review Officer.

The Independent Review Officer is appointed under the *Personal Injury Commission Act 2020* and is responsible for managing and administering the Independent Legal Assistance and Review Service.

## Legislative Framework

The *Personal Injury Compensation Act 2020* (the Act) establishes the Independent Review Officer with functions including to manage and administer the Independent Legal Assistance & Review Service (ILARS), including by issuing ILARS guidelines. The Independent Review Officer may make guidelines for the approval of lawyers to be granted funding under ILARS and the allocation and amount of funding for legal and associated costs under ILARS.

## Guideline-making powers

These Guidelines are made under Schedule 5, Part 5, clause 10(1)(b) of the Act which enables the Independent Review Officer to issue ILARS Guidelines with respect to the approval of lawyers to be granted funding under ILARS (including qualifications and experience for approval).

Clause 11 of Part 5 provides that ILARS guidelines are to be published on the NSW legislation website and take effect on the day of that publication or, if a later day is specified in the guidelines for that purpose, on the day so specified.

## Commencement

These Guidelines come into effect on 1 March 2021 and apply to all applications by Australian legal practitioners certified to practice as a solicitor to be approved as an IRO Approved Lawyer.

These Guidelines apply until the Independent Review Officer amends, revokes or replaces these Guidelines in whole or in part.

## Interpretation of these Guidelines

These Guidelines should be read in conjunction with the:

- **Agreement for Provision of Legal Services as an IRO Approved Lawyer in the NSW workers compensation scheme**, and
- **Practice Standards for IRO Approved Lawyers** issued by the Independent Review Officer

made available on the Independent Review Office (IRO) website, as in force from time to time.

## Purpose of these Guidelines

The purpose of these Guidelines is to provide guidance as to the process by which an Australian legal practitioner certified to practice as a solicitor may be approved by the Independent Review Officer as an IRO Approved Lawyer.

These Guidelines are not binding on the Independent Review Officer.

## **Application of these Guidelines**

These Guidelines apply to all Australian legal practitioners certified to practice as a solicitor intending to seek an ILARS grant of funding under the ILARS Funding Guidelines.

These Guidelines do not apply to barristers seeking to be listed as an IRO Approved Barrister for the purpose of receiving briefs from IRO Approved Lawyers.

Under these Guidelines and the Agreement to be an IRO Approved Lawyer it is a condition of approval that a lawyer complies with these Guidelines.

## **Parts of these Guidelines**

These Guidelines contains the following Parts:

1. Approval of Lawyers
2. Termination of an ILARS Approved Lawyer

## **Compliance with these Guidelines**

The Independent Review Officer will monitor and review compliance with these Guidelines.

# 1. APPROVAL OF LAWYERS

## 1.1 General

Approval to be an IRO Approved Lawyer is at the complete discretion of the Independent Review Officer.

## 1.2 Application form

An Australian legal practitioner certified to practice as a solicitor (lawyer) may apply to the IRO, in the form approved by the IRO and made available on the IRO website, for approval as an IRO Approved Lawyer.

## 1.3 Approval requirements

### 1.3.1 Eligibility criteria

To be eligible to apply to be approved as an IRO Approved Lawyer, the lawyer must satisfy the following qualifications and experience as set out in:

1. the mandatory criteria, and
2. at least three (3) general criteria within the twelve (12) months period preceding the application.

#### 1.3.1.1 Mandatory criteria

The mandatory criteria are that the lawyer must:

- be admitted as an Australian legal practitioner and certified to practice as a solicitor for a period of at least twelve (12) months, and
- demonstrate general competence and diligence, knowledge, skill and familiarity with New South Wales workers compensation law and practice.

#### 1.3.1.2 General Criteria

The general criteria are that the lawyer:

- has worked as a lawyer in the workers' compensation practice (statutory benefits) area for twelve (12) months or longer
- has worked under the supervision of an IRO Approved Lawyer for twelve (12) months or longer
- works in a law practice that has handled no fewer than five (5) ILARS grants of funding for individual clients in the preceding twelve (12) months
- has undertaken four (4) points of Continuing Professional Development (CPD) in the NSW workers compensation jurisdiction in the preceding twelve (12) months
- is accredited by the Law Society of NSW as a Personal Injury Specialist

### 1.3.2 Restricted approval

Where a lawyer cannot meet the eligibility requirements for approval and:

- is instructed by an existing client to assist with a workers compensation claim, and
- is unable to refer the client to an IRO Approved Lawyer,

the IRO may consider an application for restricted approval for the purpose of making an

application for a grant of funding to assist the existing client only.

The IRO may impose such conditions on the restricted approval as is necessary.

Conditions may include that the lawyer engage the services of an IRO Approved Barrister to assist in dealing with the client's claim, and a requirement that the lawyer's professional fees and counsel disbursements combined be no more than the professional fees that would otherwise be invoiced by an Approved Lawyer as provided in the ILARS Funding Guidelines.

#### **1.4 Effect of approval**

On approval of an Australian legal practitioner as an IRO Approved Lawyer:

- the IRO will include the IRO Approved Lawyer's details on the IRO Approved Lawyer list maintained by the IRO and accessible on the IRO website,
- the IRO may include the IRO Approved Lawyer's details in another form necessary or convenient to assist eligible workers to obtain legal representation,
- the IRO will subscribe the Approved Lawyer to all IRO publications,
- the Approved Lawyer may use the term "IRO Approved Lawyer" in documents,
- the Approved Lawyer may promote their status as an IRO Approved Lawyer, and
- the IRO Approved Lawyer can apply for a grant of funding for an injured eligible worker pursuant to the ILARS Funding Guideline published on the NSW legislation website and made available on the IRO website.

#### **1.5 Continuing eligibility**

The IRO will conduct an annual review on or about 1 July each year of grants applied for in the preceding twelve (12) months.

The IRO reserves the right to remove a lawyer who has not applied for an ILARS grant in that period from the list of Approved Lawyers.

The IRO will advise the lawyer of the proposed action to be taken in relation to the lawyer's approval status in writing and the Lawyer will have twenty one (21) calendar days to provide a response (see Part 2.3).

The IRO has discretion to take such action and impose such conditions as the IRO considers appropriate in relation to continued eligibility of the lawyer to be an Approved Lawyer.

#### **1.6 Deactivation and reactivation of approval**

Where an Approved Lawyer:

- leaves a law practice or changes their place of employment, or
- takes a leave of absence of at least six (6) months

then until the lawyer provides confirmation of their resumption of employment or new employment details, their approval will be deactivated and their name removed from the list of Approved Lawyers published on the IRO website.

Re-activation of approval will be effected without further qualification required where notice of the change of place of employment or resumption of employment is provided to the IRO within twelve (12) months of the date of deactivation.

Notice can be provided to the IRO by completion of the 'change of details form' on the IRO website or by email.

In other circumstances, the IRO will generally request the lawyer to lodge a new application for approval.

The IRO may deactivate a lawyer's approval where the lawyer does not meet continuing eligibility and does not provide a reasonable explanation for the continuation of approval.

## **2. TERMINATION OF APPROVAL AS AN IRO APPROVED LAWYER**

### **2.1 Removal on request**

An IRO Approved Lawyer may request that they surrender their approval by written notice to the IRO.

On surrender of approval the lawyer's details will be removed from the IRO Approved Lawyer list.

The removed lawyer or the principal of the law practice last employing that lawyer must:

- ensure that all open grants of funding applied for by the removed lawyer are allocated to another Approved Lawyer in the same law practice
- notify IRO of the newly assigned Approved Lawyer for each open grant within fourteen days of the lawyer's removal.

### **2.2 Reasons for termination of approval**

The IRO may terminate the approval of an IRO Approved Lawyer, by written notice to the IRO Approved Lawyer, if the IRO Approved Lawyer—

- does not apply for a grant of funding within a twelve (12) month period, or
- in the opinion of the Independent Review Officer, does not comply with any of the following:
  - these Guidelines
  - the Agreement for Provision of Legal Services as an IRO Approved Lawyer in the NSW workers compensation scheme
  - Practice Standards for IRO Approved Lawyers issued by the IRO
  - the Legal Profession Uniform Law Australian Solicitors' Conduct Rules

### **2.3 Notice before termination**

Before the IRO decides whether to terminate the approval of an IRO Approved Lawyer, the IRO must:

- give the IRO Approved Lawyer written notice of the proposed termination, and
- request a response within twenty one (21) days of the date of the notice, and
- consider a response received within twenty one (21) days of the date of the notice.

Within seven (7) days of making a final decision the IRO will provide written notice of that

decision to the lawyer.

## **2.4 Conditional approval**

Instead of terminating approval of an IRO Approved Lawyer, the IRO may place conditions on the future funding to be provided to the lawyer. Where such a condition is made, the IRO will conduct a review of the lawyer's conduct twelve (12) months after notification and advise the lawyer whether the condition(s) is amended, altered, withdrawn, or continuing.

## **2.5 Effect of termination of approval**

Where the IRO terminates the approval of an IRO Approved Lawyer, the IRO will:

- remove the IRO Approved Lawyer's details from the IRO Approved Lawyer list, and
- notify the IRO Approved Lawyer of the termination of approval, and
- facilitate the transfer of all open grant matters assigned to the lawyer as the IRO deems appropriate.

## **2.6 Actions disallowed after termination of approval**

A lawyer who is notified of the termination of their approval as an IRO Approved Lawyer must not:

- use the term "IRO Approved Lawyer", or
- apply for a grant of funding for an injured eligible worker, or
- seek payment from the IRO in a grant matter for legal costs incurred on or after the date of termination.