

Our Ref: SRC 220001

Your Ref:

7 July 2022

ILARS Review Committee

VIA E-MAIL: ilarsreview2022@iro.nsw.gov.au

Dear Sir / Madam,

ILARS Review 2022

I am a solicitor currently registered as an approved lawyer with the Independent Review Office (IRO).

I am writing to provide feedback on the ILARS Issues Paper of June 2022.

I wish to provide feedback by responding to some of the Issues for comment in that Issues Paper as follows (adopting the numbering used in that Paper):

1. Yes, I have had experience of the ILARS Scheme.
- B. As an approved lawyer acting for an injured worker.
2. Partly. The Guidelines are overly prescriptive and detailed. The current document is 48 pages long. The rules on classifications of disbursements and low limits imposed on disbursements (including the cost of providing medical reports for an injured worker) often mean that Approved Lawyers end up out of pocket for disbursements they have to pay to legitimately investigate or advance an injured worker's case. In addition, the amount of time required to interpret the Guidelines, write off some or all legitimate disbursements, prepare and submit a tax invoice to the IRO meeting the Guidelines, and have to provide copies of all receipts (even for relatively small amounts) is a significant drain on Approved Lawyers. Furthermore, when a tax invoice is rejected for a minor breach of part of the Guidelines, the lawyer then has to spend further time in preparing and submitting a revised tax invoice. The Guidelines need to be simplified and the compliance burden eased. Otherwise, the ILARS Scheme will not meet its statutory purpose of giving injured workers access to legal representation and advice as approved lawyers will be discouraged from joining or continuing with the Scheme.
9. No. Approved Lawyers are already regulated by the Law Society of New South Wales, which mandates a minimum level of continuing professional

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development as a condition for holding a solicitor's practising certificate. In addition, the rates currently being paid by the IRO are significantly under the market rates properly payable to experienced and specialised lawyers. Imposing additional ongoing hurdles for Approved Lawyers is likely to reduce the number of Approved Lawyers over time and limit access of injured workers to legal representation.

10. No. The IRO already regulates the efficiency of the professional services provided by only granting low levels of funding for these professional services (thereby requiring Approved Lawyers to be extremely efficient in their delivery of those services). If the IRO is also to take on the additional roles of regulating the effectiveness and timeliness of service provision, it will likely need to significantly increase its staff so that it can micro manage the conduct of Approved Lawyers. Increasing the size of the IRO's bureaucracy will not assist it in being a cost effective means for government to provide access to legal services for injured workers. In any case, my experience has been that IRO staff are usually good at seeking updates from Approved Lawyers to ensure that services are delivered on a timely basis and that the IRO is kept informed of progress in a matter. I would recommend that this current practice continue, instead of imposing new burdens on Approved Lawyers and existing IRO staff.
11. It should refer such complaints to the relevant regulatory authority, namely the Law Society of New South Wales or (for Victorian registered solicitors) the Victorian Legal Services Board. These regulatory bodies already have their own complaints handling and investigatory procedures in place. It would be wasteful to duplicate this process within the IRO.
12. Please see my answer to 11 above.
13. No. Barristers are already regulated by their State Bar Association / Council. In addition, complaints can also be brought to the existing regulatory bodies.
14. Yes, if a particular Approved Lawyer has experience in the relevant area of law since it would save the injured worker time in having to sift through lawyers on the list who may have personal injuries law experience, but not also have experience in wills, succession, dependency or insurance law.
15. Yes.
19. When funding is approved, Approved Lawyers are currently provided with confirmation of this approval in writing stating the stage to which funding is approved. It would save time for both Approved Lawyers and IRO staff if this funding approval could also be tied and recorded into an online claims and invoicing system (such as the system currently used by Legal Aid New South Wales when dealing with private panel lawyers). When a matter is concluded, the Approved Lawyer could then use the online system to generate an invoice for the approved funding amount and (if relevant) disbursements. The system could be set up to ensure the invoice generated complies with the IRO's Guidelines, thus saving time for both Approved Lawyers and IRO staff in having to check and re-submit invoices. The Legal Aid System also allows for


extra funding approval in more complex cases (where lawyers can apply for extensions). Where the extensions are approved, it allows the lawyer to later generate an invoice for the approved extension amount through the online system. Introducing such a system should streamline and digitise the IRO's invoicing procedure, and make it more efficient.

24. Yes. Approved Lawyers are not immune from inflation and are subject to the same costs pressures as any other individual or business. Professional fees should be annually benchmarked to movements in Average Ordinary Time Weekly Earnings ("AWOTE"), which is a measure of changes in Australian wages. In my view, this is a more appropriate benchmark than the Consumer Price Index ("CPI"). This is because the CPI measures movements of prices in a fixed basket of goods and services whereas AWOTE measures movements in wages paid for services rendered by employees. As Approved Lawyers provide services and not goods, AWOTE would be a fairer benchmark. If this is not acceptable, annual CPI benchmarking would be better than no benchmarking at all. Otherwise, the professional fees paid to Approved Lawyers will continue to decline in real terms each year. By way of illustration, in the 10 years from 2011 to 2021, Australian Bureau of Statistics ("ABS") figures showed that AWOTE rose by 35% and CPI increased by 23%.
26. In circumstances where (despite the best efforts of the Approved Lawyer and the Approved Barrister) further hearings or conferences are required by the Personal Injuries Commission. Where further hearings beyond the initial hearing are required through no fault of the Approved Lawyer or Approved Barrister, there should be an additional grant amount to cover this additional unavoidable work.
28. Yes, some circumstances facing a particular injured worker can be quite complex and outside the norm. In those cases, further legal research and work is required, and this should be compensated for by way of increased fees due to this complexity.
29. Yes.
37. GST on disbursements should be paid by the IRO. The current Funding Guidelines require Approved Lawyers to breach GST laws when submitting tax invoices to the IRO. The GST legislation and the Tax Office have made it clear that GST must be paid in these circumstances. If the Approved Lawyer is acting as agent for the IRO when incurring the disbursement, the Approved Lawyer cannot claim a tax credit for the GST – only the IRO can. This is why an agent has to be fully reimbursed for the whole GST inclusive amount of the disbursement, since only the IRO can claim the full tax credit for this GST back from the Tax Office. Alternatively, if the Approved Lawyer is not acting as agent for the IRO, the Approved Lawyer can claim a full refund of the GST back from the Tax Office. However, when it bills the disbursement to the IRO, it must add GST onto this disbursement since it is a taxable supply under the GST legislation (and not a GST-free supply or input taxed supply). The Tax Office has issued a ruling stating that adjustments of otherwise GST-free supplies for council rates and water must also have GST added to them when the supply is being made by a GST registered entity. The Funding Guidelines

need to be urgently amended to make them compliant with GST legislation by requiring the IRO to pay GST on disbursements. This change will not ultimately cost the IRO anything since it would be entitled to a full refund of the GST paid from the Tax Office.

39. Yes, disbursements for postage costs, out-of-pocket file opening fees, USB drives for sending large documents such as medical records and test results, etc. There are many small disbursements which Approved Lawyers are currently forced to bear themselves which are necessary and incidental to providing proper legal services to the injured worker.

Yours sincerely,



Suryan/Chandrasegaran