

ILARS Review 2022 – Report

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A. EXECUTIVE SUMMARY AND RECOMMENDATIONS

1. The Independent Legal Advice and Representation Service (ILARS) provides funding for legal advice and representation for injured workers. It is managed and administered by the Independent Review Officer (the **Officer**).
2. In February 2022, the Officer commissioned a review of the ILARS Funding Guidelines and Guidelines for Approval as an IRO Approved Lawyer (the **Guidelines**)¹ and whether the Guidelines promote relevant objectives of the Workers Compensation system (the system)².

Purpose of the Review

3. The Review examined whether the Guidelines enable the effective achievement of ILARS' statutory purpose, that is to:
 - provide funding for legal and associated costs for workers under workers compensation legislation seeking advice regarding the decisions of insurers under workers compensation legislation; and
 - provide assistance in finding solutions for disputes between workers and insurers

Conduct of the Review

4. The Review was undertaken by a Committee (the **Review Committee** or the **Committee**) of three independent experts, supported by a Secretariat. The Review was assisted by the establishment of a Reference Group of key workers compensation stakeholders. The Review Committee also had access to previous reviews by the NOUS Group and the recent IRO User Survey.
5. In June 2022 the Review Committee published an Issues Paper, inviting feedback on the Guidelines and the operation of the Scheme. Details of the submissions received are set out in the Attachment.
6. The Review Committee provided a draft of this Report to members of the Reference Group for feedback in October 2022. The Australian Lawyers Alliance, the Law Society of New South Wales, SIRA and iCare provided comments. The Review Committee considered the feedback received ahead of finalising the Report.
7. Other reviews initiated by the Officer are currently addressing business process, appeals costs, and system developments. These matters were not addressed in this Review.

¹ ILARS Funding Guidelines and Guidelines for Approval as an IRO Approved Lawyer

² The objectives of the workers compensation system are set out in section 3 of the Workplace Injury Management and Workers compensation system Act 1998,

Acknowledgements

8. The Review Committee acknowledges the contributions of the Reference Group members, the respondents to its Issues Paper and the draft Report, and to those practitioners that provided invaluable insight and experience of the ILARS operation.
9. The Committee is particularly indebted to the dedicated and professional assistance of its secretariat members Ms Sarah Harvey and Ms Kelly Wratten.

Findings

10. The Review Committee concluded that the ILARS Guidelines enable the effective achievement of ILARS' statutory purpose and effectively support the objectives of the workers compensation system. They do so by:
 - authorising a body of capable legal professionals (Approved Lawyers) to assist injured workers,
 - Setting fees for professional costs and disbursements that achieve the balance of being fair to Approved Lawyers and the system; and
 - providing processes and incentives for early resolution of matters.
11. Early resolution of disputes, whether through the incentives within the funding arrangement, or the work of the IRO Solutions team, reduces delays in treatment and rehabilitation, and the associated stress and impaired ability to recover from injury.
12. The Review considered all of the Guideline provisions. The overwhelming feedback from users and participants in the scheme was that the Guidelines support the scheme objectives, enable the efficient and effective operation of ILARS and are fair to participants. Feedback proposing changes to the Guidelines was limited to a small number of aspects.
13. The amount of fees payable to lawyers for work performed under the ILARS Scheme is an issue on which the system regulator (SIRA) and the insurer (iCare), and representatives of the legal profession hold contrasting views. The legal profession observes that the fees payable under the ILARS scheme have not been indexed for many years, while SIRA and iCare have expressed concerns about their effect on the financial sustainability of the scheme. In setting the fees under the ILARS scheme, the Officer needs to strike a balance between providing fair remuneration to the lawyers assisting workers under the ILARS scheme and the overall financial sustainability of the workers compensation system.
14. The financial sustainability of the workers compensation system is beyond the scope of this Review. Legal costs are only one component of system costs, and any reduction in ILARS legal costs must ensure there is no adverse impact on the other aspects of the system (workers' payouts and defendant costs), and on the overall experience for the work
15. Reduction of ILARS legal costs can, of course, be achieved by reducing demand for ILARS assistance.
16. The demand for ILARS assistance can be reduced in a number of ways including:
 - Triaging claims to ensure only substantive issues are disallowed or disputed
 - Ensuring that claims managers are experienced, to maximise the likelihood of early identification and settlement of claims which should be allowed
 - Ensuring that decisions are made promptly

These are all matters within the control of workers compensation insurers and are beyond the scope of this Review.

17. The level of ILARS legal costs is also dependent on the number of stages through which matters progress. The Review Committee is confident that there are sufficient checks in place to minimise the number of unmeritorious claims being pursued, through the requirement for funding approval for each new stage. The statistics support a finding that the majority of claims are meritorious. The Officer has informed the Review Committee that in 94% of the 8,875 ILARS matters that reached a final outcome in 2021-22, the worker's position was improved, indicating that appropriate claims are being funded.
18. iCare has submitted that the IRO monitor and report on the drivers in the increases in the cost of ILARS and report on the outcomes for injured workers including return to work rates and timeliness of treatment. Whilst these are matters outside the scope of this Review, as noted above, many of the drivers of legal costs are in the control of stakeholders other than Approved Lawyers and IRO. Therefore, any such review is likely better to be undertaken by SIRA or iCare.

Recommendations

19. The Review Committee identified opportunities to clarify and improve the operation of the Guidelines. It makes a number of recommendations, focussed on:
 - clarifying the purpose and intent of the Guidelines;
 - improving transparency in decision making;
 - improvements in the arrangements by which lawyers become and remain Approved Lawyers for the scheme; and
 - measures to ensure that the fee schedule remains fair to lawyers and the scheme.
20. The Review Committee has also recommended that the Guidelines be limited to principles of governance, with matters of procedure being embodied in a Practice Note to be developed in conjunction with stakeholders through user groups. The evidence and findings that have led to those recommendations are discussed in the body of this Report. The Review Committee's 31 recommendations are set out below. The relevant Report paragraph number is included for ease of cross reference. The terms of reference and a description of the Review process are set out in Appendix A.

Table of Recommendations

C. The Guidelines	
1.	The Officer should closely monitor the timeliness of processing of funding applications (para 43)
2.	<p>That the Officer amend the Guidelines to include a clear statement of their purpose. An example of such purpose is as follows:</p> <p><i>The Personal Injury Commission Act 2020 provides that the Independent Review Officer may issue guidelines for or with respect to the allocation and amount of funding for legal and associated costs under ILARS (Clause 10, Schedule 5 PIC Act).</i></p> <p><i>The purpose of the Guidelines is to create a governance framework for the ILARS scheme that supports the early resolution of compensation claims of injured workers and ensures funds expended in achieving this goal are effective and proportionate. (para 66)</i></p>
3.	That the Officer consider supplementing the Guidelines with a Practice Note to provide detailed operational rules, and which can be easily updated to align with improvements to IRO's business processes. (para 67)
4.	That IRO continue to develop processes for knowledge sharing amongst ILARS Principal Lawyers with the aim of promoting consistency of decision making (para 68).
5.	That the IRO establish a Practice Note User Group to provide feedback and suggestions for improvements to the ILARS Practice Note. The Practice Note User Group would meet at least annually and more frequently if required (para 69).
6.	That IRO establish a timetable for regular review of the Guidelines, with such a review being undertaken no more frequently than three yearly and no less frequently than five yearly. That any review of the Guidelines be undertaken in consultation with stakeholders through a Reference Group including members of the Practice Note User Group, and representatives of insurers, SIRA, and PIC (the Guidelines Reference Group) (para 70).
7.	That the Officer develop appropriate performance standards and report against their achievement to assess whether the Guidelines contribute to the objectives of the workers compensation system (para 71)
D. Becoming/Remaining an Approved Lawyer	
8.	The Officer expands the discretion to accept applications for Approved Lawyer status to those who demonstrate knowledge of, and familiarity with, workers compensation law and practice in New South Wales but do not otherwise satisfy the criteria for approval (para 82).

E. Practice Standards for Approved Lawyers

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| 9. | That IRO develop a short information sheet providing a brief summary of the standards IRO expects of Approved Lawyers and guidance on how to raise concerns about a lawyer's service and to escalate the matter if remedies are not achieved. This information sheet should be provided by Approved Lawyers to clients in ILARS funded matters at the commencement of the retainer (para 100). |
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F. Requirements for Remaining as an Approved Lawyer

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| 10. | That the current requirement to remain an Approved Lawyer of at least one annual application for a grant of funding, to one requiring the conduct of a minimum number of active matters annually (para 116). |
| 11. | That there is a requirement for completion of annual CPD in workers compensation law in order to remain an Approved Lawyer (para 117). |
| 12. | That IRO monitor that the requirements for ongoing approval are met (para 118). |
| 13. | That an Approved Lawyer who is an accredited specialist notify IRO of this qualification, and it be recorded on the Approved Lawyer list maintained on the IRO website as a searchable criterion (para 119). |

G. Should IRO Recommend Particular Lawyers

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| 14. | That IRO improve the accessibility of the list of Approved Lawyers on its website to make it easier to find. (para 128) |
| 15. | That IRO encourage Approved Lawyers to provide information about languages spoken and specialist accreditation to be included as searchable components in the list of Approved Lawyers on the IRO website (para 129). |

H. Applying for Grants of Funding

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| 16. | That IRO: <ul style="list-style-type: none">• Make public the criteria relevant to Stage 2 and Stage 3 funding decisions;• Provide information regarding the information and documentation required at each Stage in order for applications for funding to be considered; and• Continue to implement training and regular knowledge sharing and case discussions among ILARS staff (para 163). |
| 17. | That IRO obtains feedback from the Practice Note User Group regarding ways to promote consistency of decision making (para 164). |

I. Early Solutions	
18.	That IRO consult with key stakeholders, including insurers to identify additional opportunities to implement early solutions, to advise of any identified trends in insurer decision making, and to facilitate better consistency and merit assessment in insurer decision making (para 174).
J. ILARS Funded Fees	
19.	That the Staged Fee arrangement be retained, as best meeting the ILARS Scheme objectives (para 235).
20.	That the fees for Stage 1 are reviewed having regard to the typical scope of work in that stage, best practice in the industry and whether a loading of those fees to incentivise early finalisation is desirable (para 236).
21.	That the Officer develop guidance about “complex issues”, the circumstances in which a complexity increase will be allowed for such claims and the supporting material required to assess an application for a complexity loading. (para 237).
22.	That the Officer consider developing a set loading or range of complexity loadings by reference to different criteria to increase consistency in decision making and reduce the administrative burden. (para 238).
23.	That the Officer undertake a root and branch review of the Guideline Professional Fee and Counsel Fee Schedule (para 239).
24.	That the Fee Schedule be indexed to CPI or another appropriate benchmark, with annual adjustments (para 240).
25.	That a three yearly review of the level of fees be undertaken, having regard to any changes to the work required be undertaken and industry best practice, together with the impact on the scheme of any change in the fees. (para 241).
26.	Any review of the funding amounts by the Officer should seek input from relevant stakeholders including SIRA (para 242).
K. Should Scheduled Fees be Exclusive of Counsel Fees?	
27.	The Review Committee considers counsel’s fees should continue to be paid as a disbursement, separate to the professional fees of Approved Lawyers (para 245)

L. Disbursements	
28.	That IRO develop a Practice Note in consultation with stakeholders, to provide guidance about the application of the “reasonably necessary” test (para 262).
29.	That IRO undertake a review of the process for monitoring medical report expenses for reports obtained through MRPs, and put in place controls to ensure that the “reasonably necessary” test applies to these reports (para 263).
N. Appeal Costs	
30.	<p>Acknowledging that work is continuing within IRO on this policy, the Review Committee recommends that IRO continue to develop a policy for funding appeals that clarifies:</p> <ul style="list-style-type: none"> • Workers should seek a costs order to be paid by insurer if they are successful in an appeal (whether as applicant or respondent) • If a worker is successful in an appeal, but the Court declines to award costs, IRO will fund the appeal • If a worker is unsuccessful in an appeal (as applicant), that IRO will not pay their costs • IRO will fund the costs of an injured worker where they are respondent to an appeal • The method by which costs will be assessed (para 273).
O. Funding Federal Jurisdiction Matters	
31.	The Review Committee recommends that IRO include the finalised principles of the Appeal Costs Policy and the Federal Jurisdiction Funding Policy in the Guidelines and other IRO practice guidance (para 268).

B. BACKGROUND

21. ILARS was established in 2012 in response to reforms to section 341 of the *Workplace Injury Management and Workers Compensation Act 1998*, (the **1998 Act**) requiring that '[e]ach party is to bear the party's own costs in or in relation to a claim for compensation'.
22. The Independent Review Officer is an independent statutory office holder established under the *Personal Injury Commission Act 2020 (PIC Act)*. The Officer is supported by expert staff who work in the Independent Review Office (the **IRO**).
23. In announcing the establishment of ILARS in 2012 the then Minister for Finance and Services outlined its features as follows:
 - A free legal review service within the WorkCover Independent Review Office – no legal expenses need be covered by the worker;
 - Reviews to be conducted by independent legal experts in the area of workers compensation.
 - Where the insurer does not agree with the opinion of that independent legal advice, workers may be provided with independent legal representation to pursue matters in the Workers Compensation Commission following a merit review.³
24. ILARS was given a specific statutory basis from 1 March 2021, with Part 5 of Schedule 5 to the PIC Act establishing it as a function managed and administered by the Officer. In addition, the Guidelines have been given the status of a statutory instrument and must be tabled in Parliament and are subject to disallowance.
25. Clause 9 of Schedule 5 provides:

Independent Legal Assistance and Review Service

 - (1) *There is to be an Independent Legal Assistance and Review Service managed and administered by the Independent Review Officer.*
 - (2) *The purpose of ILARS is to provide funding for legal and associated costs for workers under the Workers Compensation Acts seeking advice regarding decisions of insurers for those Acts and to provide assistance in finding solutions for disputes between workers and insurers.*⁴
26. ILARS addresses its purpose through providing funding, and an early solutions pathway. This latter work is undertaken by the IRO's Solutions team (**Solutions**).
27. The ILARS funding recognises the importance of injured workers obtaining independent legal advice and the arrangements ensure that this can be done. It is not a function of the ILARS to provide legal advice or legal services to workers.

³ Greg Pearce MLC, Minister for Finance and Services Media Release – 26 September 2012

⁴ *Personal Injury Commission Act 2020* Schedule 5, clause 9

28. In order to ensure that workers obtain advice from lawyers with legal expertise in workers compensation, as a general rule, only Lawyers approved by the Officer may participate in ILARS.
29. The Guidelines set out a process for lawyers to apply to become Approved Lawyers entitled to apply for ILARS funding to represent injured workers. In limited circumstances lawyers who have not been approved may also be funded. Applications for funding are made by the lawyer, not workers.
30. The Officer has informed the Review Committee that, as at 30 June 2022, there were 896 Approved Lawyers and 185 Approved Barristers (barristers approved by the IRO to undertake advocacy for injured workers).
31. Demand for ILARS support has grown since the scheme's inception. The Committee was informed that in 2021-22 the IRO approved more than 21,000 funding applications and paid approximately \$48.5M in professional fees and \$29.8M in disbursements.
32. Demand for ILARS support is influenced by a number of factors including events in the broader workers compensation system such as disputation rates with insurers, trends in injury types and evolving law.

Other Reviews

33. This Review complements other work being undertaken by IRO. This includes a Business Process Review (**BPR**), user experience surveys (covering both the ILARS and Solutions functions) and a review of recovery of appeal costs.
34. The BPR is a review of all IRO processes to identify opportunities for business process transformation and reform. The BPR commenced in mid-2021 and is expected to be completed by the end of 2022.
35. IRO conducted User Experience surveys in early 2022 to explore how service users perceive the ILARS scheme and Solutions and to identify opportunities to improve the user experience. Three surveys were developed to best target each type of user: Approved Lawyers, injured workers and insurers. The results of these surveys have informed this Review.
36. The Funding Guidelines provide for funding for appeals to the Personal Injury Commission (**PIC**) and for appeals to other jurisdictions in specific circumstances. IRO is currently reviewing those appeals not currently supported under the Guidelines to consider the appropriate funding principles to be applied. Whilst the Review Committee has considered this issue, the IRO's review is not concluded and therefore the Review Committee makes no findings on Appeal Costs.
37. In 2020, the Nous Group undertook an assessment of the Solutions and ILARS functions within IRO (then WIRO). It found that ILARS and the Solutions function were perceived as expert and accessible, seeking outcomes which were fair to all stakeholders and responsive to feedback. The findings of this assessment have also informed the Review Committee.

Basis of this Review

38. There is no current legislative, or other requirement for a review of the Guidelines. Historically, reviews and reform of the ILARS funding arrangements have taken place when it is determined to be required by the Officer. In this respect it should be noted the Guidelines are the first to be implemented following the creation of the Officer as an independent statutory office holder. They are now subject to scrutiny and potential disallowance by the NSW Parliament.
39. The Review Committee has made recommendations regarding the establishment of a policy on when and how a review of the Guidelines should occur.

C. THE GUIDELINES

Present State

40. The Guidelines are a key pillar of the governance of ILARS. Their importance is reinforced by their status under the legislation as statutory instruments.
41. Section 3 of the 1998 Act sets out the objectives of the workers compensation system. The Guidelines identify those relevant to their operation. These can be paraphrased as fairness, affordability, financial viability, efficient and effective delivery, and are set out in Part 1.1 of the ILARS Funding Guidelines.
42. The Guidelines serve as the decision-making framework for the administration of the ILARS scheme. They also outline the process to be followed by Approved Lawyers in:
 - applying for grants of funding;
 - the various stages of proceedings for which funding may be sought;
 - the threshold tests that will be applied by the IRO in assessing funding applications; and
 - the disbursements that may be claimed and the amounts of professional costs payable to lawyers for representation at each stage of proceedings.
43. The Committee understands that in 2021-22 more than 80% of initial applications for a grant of funding were decided within five business days, with an average processing time of 2.7 business days if no further information was requested. Over 96% of applications were successful. While this reflects positively on the timeliness and effectiveness of the application process, the processing of applications is slightly slower than 2020-21 when 90 per cent of applications were determined within five business days. The Committee recommends that the Officer closely monitor this trend.
44. The Committee notes the high rate of improved worker outcomes (94% in 2021-22 – see paragraph 17 above) and considers this indicates, that appropriate claims are being funded.
45. The user experience survey conducted on behalf of IRO in early 2022 found that injured workers:
 - are generally satisfied with their Approved Lawyers (70%);
 - value their knowledge and expertise (84%); and
 - appreciate their ability to explain complex matters in simple language (91%).

Feedback

46. The Review sought comment in relation to the overall operation of the ILARS scheme and the ILARS Guidelines. Feedback from users and participants in the scheme was that the Guidelines support the scheme objectives, enable the efficient and effective operation of ILARS and are fair to participants. The NSW Law Society and the Australian Lawyers' Alliance (the **ALA**) consider that the Guidelines help to fulfill the purpose of ILARS and are comprehensive and complete. No concern was raised as to the accessibility of the ILARS scheme by injured workers although the NSW Bar Association did suggest that more foreign language content might be useful.

47. The Issues Paper canvassed stakeholders' views regarding the frequency and process of reviewing the Guidelines. The responses were supportive of a regular review process to identify and implement opportunities for improvement.
48. Some stakeholders observed that consistency between the decisions of ILARS Principal Lawyers could be improved.

Findings

49. The Review Committee has considered all of the Guideline provisions both in their individual operation but also in their operation as a whole.
50. The evidence of approval times and number of matters where the worker obtains a benefit supports a finding that the Guidelines are operating effectively and efficiently.
51. The findings of the user experience survey support the conclusion that the Guidelines serve the purpose of ensuring that lawyers with expertise in workers compensation law participate in the scheme, contributing to the scheme's efficiency and effectiveness.
52. The number of Approved Lawyers supports the view that there are no unreasonable barriers to qualifying as an Approved Lawyer and that all injured workers should be able to access an Approved Lawyer.
53. The scope of funded work enables injured workers to obtain appropriate and timely advice about the merits of their claim and challenge the decisions of insurers in meritorious matters. This is evidenced by the high proportion of funded matters where the worker achieves a better outcome.
54. The Guidelines facilitate efficiency by setting out a clear process for applying for funding, including funding extensions. They have been drafted in plain English and are well understood by Approved Lawyers.
55. Given the status of the Guidelines as a legislative instrument, consideration should be given to treating them as a governance framework for the ILARS scheme, and to developing a separate Practice Note for the business process and practices of administering and participating in the scheme.
56. The Review Committee considers that the Guidelines require a clear statement of their purpose and an articulation of the principles of governance for the ILARS scheme. This clarification would assist the Officer to regularly assess whether the Guidelines are meeting their objectives.
57. The Review Committee considers the Guidelines should be supplemented by a Practice Note which establishes procedures and practices that give effect to the Guidelines. The development of a Practice Note will:
 - Provide Approved Lawyers with a clear understanding of the application of the Guidelines and the practices and procedures to be followed
 - Promote consistency of decision making among ILARS Principal Lawyers
 - Provide transparency on how decisions related to the administration of the scheme will be made
 - Provide flexibility to amend as practices and procedures in the industry evolve

58. The Review Committee sees merit in the IRO ensuring that it has an understanding of what is accepted industry best practice in conducting a matter, as this will be relevant to the development of the Practice Note. This involves an understanding of how technology should be utilised, what work is appropriately undertaken by paralegals or law clerks, and what by solicitors, and when counsel should be briefed. The Review Committee does not consider that it is the role of the Officer or the IRO to dictate to lawyers how they should conduct their practice. It is about ensuring the IRO itself understands best practice so that it can ensure that fees pay for the proper work.
59. Given the changing nature of injuries suffered and the evolution of law and its application, it is important the IRO be agile in adapting practices which will meet the system objectives of efficiency and effectiveness.
60. The Review Committee sees merit in establishing a **Practice Note User Group** which could provide feedback to the IRO in relation to the operation of the Practice Note, suggestions regarding improvements to the way in which the IRO and Approved Lawyers work together, and on industry best practices on the conduct of the work, and any issues as they emerge. The User Group should meet at least annually and more frequently if required.
61. The Review Committee sees merit in the IRO putting in place measures to ensure knowledge sharing amongst Principal Lawyers to promote consistency in decision making. This could be by regular meetings of Principal Lawyers or specific training.
62. It would be considered good practice to regularly review the Guidelines based on operational and stakeholder experience. The Review Committee considers that this should be undertaken no more frequently than once every three years and no less frequently than every five years. It should be undertaken in consultation with stakeholders through a Reference Group including members of the Practice Note User Group, and representatives of insurers, SIRA, and PIC (the **Guidelines Reference Group**).
63. This assumes that the IRO adopts the recommendation that the Guidelines be treated as a governance framework for the Scheme and that a Practice Note be developed for the business process and practices of administering and participating in the scheme.
64. The Review Committee considers that a three yearly review of the fees in the Guidelines should be undertaken. This aspect is addressed in more detail in Part J of this Report.
65. The Review Committee notes that the Guidelines do not include any objective measures to assess their contribution to the system objectives. The Review Committee recommends that the Officer develop appropriate performance standards and report against their achievement. It is usual that such standards would address timeliness, quality and cost. One measure of quality could be the level of positive worker outcomes, noting that this would reflect the quality of IRO decision making on funding applications.

Recommendations

66. That the Officer amend the Guidelines to include a clear statement of their purpose. An example of such a statement of purpose could be:

The Personal Injury Commission Act 2020 provides that the Independent Review Officer may issue guidelines for or with respect to the allocation and amount of funding for legal and associated costs under ILARS (Clause 10, Schedule 5 PIC Act).

The purpose of the Guidelines is to create a governance framework for the ILARS scheme that supports the early resolution of compensation claims of injured workers and ensures funds expended in achieving this goal are effective and proportionate.

67. That the Guidelines be supplemented with a Practice Note which will provide detailed operational rules, and which can be more easily updated to align with improvements to the IRO's business processes.
68. That the IRO continue to develop processes for knowledge sharing amongst ILARS Principal Lawyers with the aim of promoting consistency of decision making.
69. That the IRO establish a Practice Note User Group to provide feedback and suggestions for improvements to the ILARS Practice Note. The Practice Note User Group would meet at least annually and more frequently if required.
70. That the IRO establish a timetable for regular review of the Guidelines, with such a review being undertaken no more frequently than three yearly and no less frequently than five yearly. That any review of the Guidelines be undertaken in consultation with stakeholders through a Reference Group including members of the Practice Note User Group, and representatives of insurers, SIRA, and PIC (the **Guidelines Reference Group**).
71. That the Officer develop appropriate performance standards and report against their achievement to assess whether the Guidelines contribute to the objectives of the workers compensation system.

D. BECOMING/REMAINING AN APPROVED LAWYER

Present State

72. Only an Approved Lawyer can apply for a grant of ILARS funding. The eligibility requirements to become an Approved Lawyer are:
- to have been admitted as an Australian legal practitioner and certified to practice as a solicitor for a period of at least twelve (12) months, and
 - to be able to demonstrate general competence and diligence, knowledge, skill and familiarity with New South Wales workers compensation law and practice.
73. In addition, the Approved Lawyer must meet three of the following five criteria:
- Worked as a lawyer in the workers compensation statutory benefits area for at least twelve months.
 - Worked under the supervision of an IRO Approved Lawyer for at least 12 months.
 - Worked in a law practice that has handled at least five ILARS grants of funding for individual clients in the previous 12 months.
 - Undertaken four points of CPD in the NSW Workers compensation jurisdiction in the preceding 12 months.
 - Be accredited by the Law Society of NSW as a Personal Injury Specialist.
74. Approved Lawyers must also agree to the terms and conditions in the Application and Agreement to be an IRO Approved Lawyer. This includes agreeing to comply with the IRO's Guidelines, Practice Standards and administrative requirements. Similar requirements apply to becoming an IRO Approved Barrister.
75. The IRO has a general discretion in relation to the approval of candidates.
76. Where an injured worker wishes to use their current lawyer or is unable to use an Approved Lawyer for some other reason the IRO may consider conferring restricted approval on a legal practitioner. The IRO usually limits restricted approval to a particular matter.

Feedback

77. The NSW Law Society observed that the prerequisite of 12 months experience may have the unforeseen effect of excluding appropriately experienced but newly admitted solicitors. This includes those with demonstrated experience in the workers compensation system who have transitioned from law clerk, paralegal or secretarial positions. Such persons would be required to work as a lawyer for at least 12 months before meeting the approval criteria. The NSW Law Society recommended consideration of a probationary system to manage such arrangements⁵.

⁵ NSW Law Society submission – pg 2

78. Some law firms suggested the Restricted Approval scheme could be extended to apply to early career lawyers with less than 12 months relevant experience or to paralegals practicing under the supervision of an Approved Lawyer.
79. The NSW Bar Association recommended the Officer consider “identifying and facilitating a pathway for solicitors to gain accreditation where they have not had the opportunity to work in the field previously and are not in a position to work under the supervision of an Approved Lawyer in the same firm. For example, a sole practitioner with his or her own practice in an isolated regional centre, or an interstate solicitor working in a border town such as Coolangatta, Wodonga, or Mildura”⁶.
80. Stakeholder submissions were sought on the issue of whether the Officer should be assessing performance as a criterion for remaining an Approved Lawyer.

Findings

81. There is no evidence that the current approval criteria are a material impediment to the provision of legal assistance to injured workers, or that injured workers have trouble finding an Approved Lawyer to act for them. However, in order to ensure injured workers have access to a broad range of suitably qualified legal professionals, the Officer might consider exercising his discretion to approve those who demonstrate knowledge of and familiarity with workers compensation law and practice in New South Wales but, do not otherwise satisfy the criteria for approval. The Review Committee views the current criteria as appropriate to ensure quality of legal assistance but there is merit in allowing the IRO additional discretion to approve, on application, a lawyer competent to manage cases but which doesn't yet meet three of the requirements.

Recommendation

82. The Officer expands the discretion to accept applications for Approved Lawyer status to those who demonstrate knowledge of and familiarity with workers compensation law and practice in New South Wales but do not otherwise satisfy the criteria for approval.

⁶ NSW Bar Association submission – pg 2

E. PRACTICE STANDARDS FOR APPROVED LAWYERS

Present State

83. The Practice Standards for IRO Approved Lawyers⁷ (**Practice Standards**) and the terms of the Application and Agreement to be an IRO Approved Lawyer⁸ set out the IRO's expectations as to lawyer conduct.
84. The Guidelines and the Practice Standards impose various requirements on the Approved Lawyer to pursue the matter and to keep IRO advised of progress.
85. These address issues such as acting promptly in relation to funded matters and in response to information requests. In particular, clause 3.1.10 of the Practice Standards specifies that an Approved Lawyer must "*maintain dealings...with the IRO, client, other legal practitioners, the PIC and any Court that facilitate the just, quick and cheap resolution of any claim or dispute*"⁹ in respect of any matters for which funding is granted.
86. Paragraph 3.1.13 of the Practice Standards, requires the Approved Lawyer "*...to keep the IRO advised of the progress of the matter and promptly provid[e] information required [by the IRO]*"¹⁰.
87. The Guidelines provide that if the grant remains open for a period of twelve months without any progress, the matter may be closed, and the Lawyer will have to apply anew for funding. The ILARS team sends periodic reminders to grant holders from which it has not heard. The Review Committee understands these reminders have been automated as an outcome of the BPR.
88. Where an injured worker complains to the IRO about the conduct of an Approved Lawyer, the IRO encourages the injured worker to raise that complaint directly with the Lawyer, or their supervising partner.
89. The IRO will also receive and review information from the NSW Law Society about lawyers the subject of disciplinary action to act on any matters concerning Approved Lawyers, and work with legal regulator and liquidators when requested to provide information.
90. Otherwise, the IRO does not assess the performance of Approved Lawyers.

Feedback

91. The Issues Paper sought feedback on what role ILARS should play in assessing the quality of the professional services provided by Approved Lawyers and the extent to which they meet the objectives of the workers compensation scheme.
92. Legal stakeholders generally consider the existing professional oversight arrangements are sufficient and an additional layer of supervision would be unnecessary. The Law Society notes that ILARS Principal Lawyers will sometimes raise a service issue with an Approved Lawyer informally and this often results in a matter being resolved.

⁷ Practice Standards for IRO Approved Lawyers

⁸ Application and Agreement to be an IRO Approved Lawyer

⁹ Practice Standards for IRO Approved Lawyers

¹⁰ Practice Standards for IRO Approved Lawyers – pg 2

93. The State Insurance and Regulatory Authority (**SIRA**) agreed that the IRO does not have a role in dealing with complaints about lawyers. It suggested the IRO could specify the outcomes and quality assurance processes for Approved Lawyers, and clarify whether the IRO has the capability to reject an application for approval or revoke an existing approval for legal practitioners who are the subject of complaints to IRO¹¹
94. iCare considered that measurement of the performance of funded lawyers is critical to ensure value-based funding for legal services.¹²

Findings

95. The Review Committee considers the IRO's Practice Standards set appropriate expectations about the conduct of matters and communication with clients.
96. The User Experience survey showed an overall worker satisfaction rate with Approved Lawyers of 69%. Around 75% of workers surveyed considered their lawyer was responsive in communications, and 80% felt their lawyer explained the process clearly. Around 62% of workers surveyed were satisfied with the level of communication from their lawyer about expected turnaround times for matters and 67% felt that the outcome of their matter was communicated clearly.
97. In 2020-21, of the 2,714 written complaints made to the Office of the Legal Services Commissioner¹³ only 3.3 % related to the conduct of workers compensation matters by lawyers. This indicates that the complaint levels are low, and that there is no need for an additional layer of professional supervision by the IRO.
98. It is recognised that the timeframes for progressing matters are often not within the lawyer's control, meaning it can be difficult to provide certainty to the injured worker.
99. However, the Review Committee considers that there is merit in developing a short information sheet for claimants providing a brief summary of the standards the IRO expects of Approved Lawyers. This would include guidance on how to raise concerns about the lawyer's service. The initial point of contact would be the law firm itself, and if no satisfactory outcome is obtained, the professional body and/or the Legal Services Commissioner. This information sheet should be provided by Approved Lawyers to clients in ILARS funded matters at the commencement of the retainer.

Recommendations

100. That the IRO develop a short information sheet providing a brief summary of the standards the IRO expects of Approved Lawyers and guidance on how to raise concerns about a lawyer's service and to escalate the matter if remedies are not achieved. This information sheet should be provided by Approved Lawyers to clients in ILARS funded matters at the commencement of the retainer.

¹¹ SIRA Submission – pg 7

¹² iCare Submission – pg 1

¹³ Office of the Legal Services Commissioner Annual Report 2020-21 – pg 25

F. REQUIREMENTS FOR REMAINING AS AN APPROVED LAWYER

Present State

101. Once qualified as an Approved Lawyer the only requirement to retain that status is for a legal practitioner to retain registration with their professional body. The Guidelines provide that Approved Lawyers may be removed from the IRO's list if they have not applied for an ILARS grant in the previous 12 months.
102. The Review sought feedback on whether an Approved Lawyer should meet other criteria in order to remain approved such as additional Continuing Professional Development (CPD) or making more than one funding application per year.

Feedback

103. The Law Society observed that it is important that Approved Lawyers under the ILARS scheme have competence, diligence, and knowledge, skill and familiarity with compensation law and practice.
104. The Law Society submitted that in the light of the complexities and legislative changes that frequently occur in the workers compensation statutory benefits area the minimum number of cases per annum be increased to two or more. It further suggested that consideration should be given to requiring those on the list to undertake annual professional development in NSW compensation law and practice.
105. Other stakeholders, including the NSW Bar Association, considered that the existing continuing professional development requirements are sufficient, and the IRO should not impose requirements on Approved Lawyers over and above those required by their professional bodies.
106. Bellissimo Legal observed that increasing the minimum number of grants an Approved Lawyer must apply for from one to two per year may discriminate against smaller law firms. These firms may have several workers compensation clients in one year, and none the next¹⁴.
107. They contend that requiring a greater number of claims to remain approved may reduce the choice of lawyer available to an injured worker. Noting that smaller practices can offer a valuable service to a workers compensation client. Bellissimo Legal submitted that small practices also usually have lower overheads and fees, provide a more personalised service to the claimant and devote more time to a matter.
108. Albury Legal observed that the professional fees paid by the IRO are significantly under market rates. They submitted that the imposition of further criteria and associated cost may reduce the number of Approved Lawyers over time and therefore reduce injured workers access to legal representation¹⁵.

¹⁴ Bellissimo Legal submission pg 2

¹⁵ Albury Legal submission pg 3

Findings

109. The purpose behind the current requirements to remain an Approved Lawyer is to ensure that only an experienced body of lawyers is approved to provide assistance to workers.
110. This is currently assessed by the requirement to apply for funding in at least one matter per year. This requirement is not currently monitored.
111. The Review Committee considers that a preferable criterion is the number of funded matters which are actively managed by the Approved Lawyer over a year. This recognises that an Approved Lawyer may be actively involved in ongoing matters which can take more than a year to finalise, without applying for funding in new matters. The Review Committee considers that a possible minimum number of three active matters may be appropriate, but this can be established by analysis of the data
112. It further considers that whatever criteria is adopted, the IRO establish procedures to monitor its application.
113. This monitoring does not need to be burdensome and could for example be met by seeking an annual certification by the Approved Lawyer of their active management of funded matters or interrogating the IRO database to identify lawyers who do not meet the requirement.
114. A further measure to ensure the continuing capability of Approved Lawyers is that they undertake annual CPD in workers compensation law. This would not be an additional cost or administration burden for the Approved Lawyer. The Review Committee notes that the IRO provides regular seminars on workers compensation issues at no cost and attendance at such a seminar counts as part of the annual CPD requirements of the Legal Profession Uniform Law to be undertaken by a legal practitioner in order to retain a practising certificate.
115. A further means of ensuring the quality of legal services would be listing accredited specialists in personal injury law as a searchable criterion on the IRO website.

Recommendations

116. That the current requirement to remain an Approved Lawyer of at least one annual application for a grant of funding, to one requiring the conduct of a minimum number of active matters annually.
117. That there is a requirement for completion of annual CPD in workers compensation law in order to remain an Approved Lawyer.
118. That the IRO monitor that the requirements for ongoing approval are met.
119. That an Approved Lawyer who is an accredited specialist notify IRO of this qualification, and it be recorded on the Approved Lawyer list maintained on the IRO website as a searchable criterion.

G. SHOULD IRO RECOMMEND PARTICULAR LAWYERS?

Present State

120. The IRO website includes a list of Approved Lawyers. The Guidelines contemplate that in limited circumstances, the IRO may provide assistance to find an Approved Lawyer. Where there is a death benefit claim, the Guidelines allow for every dependent and potential dependent of a deceased worker to be separately represented. This accounts for potential conflicts of interest that could arise if the one lawyer were to act for all beneficiaries. The Issues Paper asked whether the IRO should adopt a more general practice of recommending particular Approved Lawyers to injured workers.

Feedback

121. Legal stakeholders mostly agreed the IRO should not play a role in recommending a lawyer to injured workers. The Bar Association noted that it could offend competition principles. However, the Law Society suggested that where an injured worker is from a linguistically diverse background, and the IRO has reliable information that certain Approved Lawyers are fluent in a relevant language, the IRO should be able to convey that information to the injured worker.
122. With respect to separate legal representation of each dependent in death benefit claims, the Law Society suggested the IRO could maintain a list of solicitors who are able to represent clients in these types of matters. Solicitors on the list would either have self-nominated with the IRO as having relevant experience or be an accredited specialist with the Law Society.

Findings

123. While there is a list of Approved Lawyers on the IRO website, it is not readily accessible, and the Review Committee considers that, given its importance to injured workers, it should be more easily located.
124. The Review Committee considers that it could be of benefit to injured workers if the list of Approved Lawyers included information about languages other than English spoken as a searchable component of the Approved Lawyer list. This could help injured workers to choose the legal representative who best meets their needs. The IRO could consider inviting Approved Lawyers to provide this information to be added to their listing on the IRO website.
125. As noted previously, the Review Committee considers there is benefit to claimants in the Approved Lawyer list including details of Personal Injury specialist accreditation.
126. The Review Committee considers that the existing policy of not recommending approved lawyers other than in the specialised area of death benefits has merit and should be retained.
127. The Review Committee considers the current process for approval of a lawyer sufficiently ensures the quality of legal services and that the availability of a list of Approved Lawyers on the website once it is more accessible is sufficient to ensure that workers can locate a lawyer to provide assistance.

Recommendations

128. That IRO improve the accessibility of the list of Approved Lawyers on its website to make it easier to find.
129. That IRO encourage Approved Lawyers to provide information about languages spoken and specialist accreditation to be included as searchable components in the list of Approved Lawyers on the IRO website.

H. APPLYING FOR GRANTS OF FUNDING

Present State

130. The requirements for funding are prescribed in the Guidelines. Typically, an Approved Lawyer will apply for a grant of funding when they initially receive instructions from a client. Subsequent stages can be approved if the case has merit and a satisfactory resolution with the insurer is not achieved.
131. Approved Lawyers apply for funding via a PDF form which can be completed electronically and lodged by email. The application is then assessed by one of the ILARS team. This assessment is completed by a paralegal for advice matters, or by a Principal Lawyer in more complex matters. The application is then either approved, declined or further information requested.
132. Depending on the stage of proceedings for which funding is sought, the Guidelines specify various thresholds and tests that must be satisfied.
133. The Issues Paper canvassed whether the ILARS scheme funds the “right” types of legal work and claims. In other words, whether the current funding arrangements accommodate the work usually required to be undertaken by lawyers in the course of a workers compensation claim including advising injured workers about their rights and entitlements before a claim is lodged.
134. The work funded under the ILARS scheme covers the events in the life of a claim and proceedings through the PIC.
135. The Guidelines provide there is a presumption in favour of funding. In 2021-22, 96% of all initial funding applications were approved. In the same reporting year 16,472 matters were closed, with IRO recording a “final outcome” in 8,875 or 54% of matters and “no final outcome” in 7,597 or 46% of matters.
136. The IRO defines a “final outcome” to be where a matter is determined, or a settlement reached. “No final outcome” refers to matters which did not proceed either on the election of the worker or lack of merit of the claim.
137. These figures illustrate the benefit of Stage 1 funding, in that it serves its purpose of ensuring that workers receive early advice about the merits of their claims, and that those matters with merit proceed to Stage 2 and beyond.

Funding Stages

138. **Stage 1 funding** is available for lawyers instructed by an injured worker to determine whether they can provide assistance to pursue any rights and entitlements of their client under the workers compensation legislation. The funding enables lawyers to:
 - Confer with and obtain instructions from an injured eligible worker
 - Provide the worker with comprehensive legal advice
 - Advise on an insurer’s decision
 - Conduct early inquiries and respond to a request for further information
 - Commence investigating a claim (including completing a workers claim form and advising on the insurers resultant decision)
 - Assess the prospects of disputing an insurer’s decision and
 - Explore and achieve early solutions

139. The amount of funding at Stage 1 is generally capped at \$800. Disbursements are claimable for clinical notes from the worker's treating health service providers and hospitals attended by the worker for treatment of the injury and for interpreter's fees.
140. While the Guidelines provide that Stage 1 fees are only payable once in relation to a matter, this decision may be re-assessed at the conclusion of the matter if a new issue or dispute has emerged.
141. Difficulties can arise with Stage 1 funding when an injured worker seeks to engage multiple lawyers to advise on the same issues.
142. The introduction of funding for Stage 1 advice has increased the overall costs of ILARS by a small amount. The IRO Performance Report for July 2021-March 2022¹⁶ notes that 1,920 advice-only matters were finalised at a cost of \$2,013,471. This represented 15.9% of the matters finalised, and only 3.6% of total cost. The Review Committee consider that the provision of early advice to a worker has contributed to both the early resolution of matters and the testing of the merits of a claim and reduces the risk that workers do not have access to remedies to which they are entitled.
143. Prior to the introduction of Stage 1 funding, workers were reliant on the goodwill of a lawyer to provide this advice without payment, with instances of workers being unable to obtain advice on their claims.
144. Stage 1 advice ensures that injured workers are informed of their rights to access treatment and rehabilitation services, and to secure income support and lump sum compensation. These features make a material contribution to the wellbeing of the individual, their family and the productivity of the broader economy.
145. The Review Committee therefore supports the retention of Stage 1 funding.
146. **Stage 2 funding** is available to further investigate and proceed on a claim for benefits, or a dispute about a decision on any aspect of a claim or an insurer's position regarding an impairment threshold (excluding a threshold for work injury damages claim). It covers all work up to the commencement of proceedings in the Personal Injury Commission.
147. To obtain Stage 2 funding the matter must have merit. The Approved Lawyer is required to provide an explanation or short reasons together with any evidence or material available which supports the request and demonstrates the purpose for which the funding is sought.
148. **Stage 3 funding** is available to pursue dispute resolution proceedings in the PIC. These may be granted if the Approved Lawyer can demonstrate the injured worker has an arguable case, and that reasonable steps have been taken to achieve early resolution with the insurer, including seeking a review of the insurer's decision. At Stage 3, the Approved Lawyer can claim reasonably necessary disbursements, and pre-approval is generally not required.
149. **Stage 4 funding** is available for appeals and reconsiderations. (IRO is currently developing a specific policy in relation to appeals funding, which is discussed later in this paper).

¹⁶ IRO Performance Report July 2021-March 2022

Applications for Funding Extensions

150. Most matters will progress through multiple stages. The Guidelines provide that where an Approved Lawyer has already obtained a funding grant, and the matter progresses to the next stage, they can request an extension of funding by email. The extension application will still be assessed using the same criteria as for initial applications.

Reviews of Funding Decisions

151. Funding decisions are usually accompanied by a brief statement of reasons. The Guidelines provide that an Approved Lawyer who disputes the funding decision may request a review by the Director of ILARS in the first instance. If required, a final review will be undertaken by the Officer. Significant review decisions are published in the IRO News. The publication of review decisions provides helpful guidance for both Approved Lawyers and ILARS team members and assists in adopting a consistent approach to similar issues.

Feedback

152. Stakeholders generally consider the threshold tests for determining funding applications appropriate. The Law Society, however, suggested that consideration should be given to funding disputes about whether the threshold has been reached, regardless of whether the threshold is for statutory benefits (for example commutation and impairment lump sum) or work injury damage purposes. The Guidelines currently exclude funding under Stage 2 to assert a threshold for work injury damages claim.
153. Stakeholders considered there could be greater consistency in decision making across ILARS lawyers in determining applications for funding.
154. The Law Society also observed it could sometimes be difficult to meet the Stage 2 test of demonstrating the merits of a case without providing medical evidence, for which limited disbursement funding is available before a Stage 2 application is granted.
155. The Law Society reported examples where Approved Lawyers have provided Stage 1 advice to an injured worker, only to later find their client has previously received Stage 1 advice from another Approved Lawyer, who had already claimed the ILARS funding for that advice.
156. Given that funding is only available once for each stage, unless the old and new Approved Lawyer come to an agreement over apportionment of the ILARS fee payable in respect of the advice (as contemplated by the Guidelines), the second lawyer will not be paid for the advice.
157. Feedback from legal stakeholders indicated that there are practical problems in this situation and attempts to agree on apportionment are rarely successful.
158. This issue is currently being considered, and potential solutions canvassed, as part of the BPR. The measures being considered include requiring an Approved Lawyer:
- to obtain formal acknowledgement from the injured worker that the lawyer is instructed to act
 - to provide an injured worker with information about how the ILARS scheme works, especially that only one claim may be made for Stage 1 advice funding

Findings

159. The Review Committee considers the question of whether threshold disputes for work injury damages should be funded under ILARS is outside the scope of this Review and is a matter which may require further examination by the Officer. The Committee notes that work injury damages matters are ones where section 341 of the 1998 Act does not apply, and costs can and are awarded in these matters.
160. The Review Committee noted that of the Approved Lawyers surveyed in the user experience survey 84% of respondents agreed that funding decisions are consistent with the Guidelines.
161. The threshold tests for both Stage 2 and Stage 3 funding are inherently subjective, requiring ILARS lawyers to exercise individual judgement and discretion about the merits of a case.
162. The Review Committee considers IRO can promote consistency in decisions by:
- Making public the criteria by which these decisions are made;
 - Providing clarification of information and documentation required in order for the applications to be considered. One option would be to develop templates for the provision of this information, as a means of improving the consistency and completeness of the information, reducing the need for requests for additional information;
 - Obtaining feedback from the Practice Note User Group regarding information required to be provided and ways to improve consistency of decision making; and
 - Continuing to implement measures such as training and regular knowledge sharing and case discussions among ILARS staff so as to encourage appropriate consistency in decision making.

Recommendations

163. That the IRO:
- make public the criteria relevant to Stage 2 and Stage 3 funding decisions;
 - provide information regarding the information and documentation required at each Stage in order for applications for funding to be considered; and
 - continues to implement training and regular knowledge sharing and case discussions among ILARS staff.
164. That the IRO obtains feedback from the Practice Note user group regarding ways to promote consistency of decision making.

I. EARLY SOLUTIONS

Present State

165. It is a key objective of the IRO to find early and quick solutions for disputes between injured workers and insurers arising from workers compensation legislation. Under the PIC Act, the IRO has the power to compel insurers to provide information.
166. The Solutions team accepts referrals from ILARS lawyers, Approved Lawyers and directly from injured workers.
167. The Committee was informed that in the 2021-22 year, the Solutions team intervened in more than 727 ILARS grant funded matters, mostly where insurers had not responded to claims. Where an insurer accepts a claim after an IRO intervention, the IRO estimates the savings in legal and professional costs to be \$3,643 per case (i.e. a total of \$2.7 million in 2021-22). This figure is calculated as the difference between the average cost of professional fees where the matter is resolved in the PIC less the average cost of professional fees where the matter is resolved prior to the PIC. Added to this figure, is the difference between the average cost of disbursement fees where the matter is resolved in the PIC less the average cost of disbursement fees where the matter is resolved prior to the PIC.
168. The most common point for a Solutions intervention is just before a matter is referred to the PIC. The Guidelines require the Approved Lawyer to have taken reasonable steps to achieve early resolution of the matter with the insurer before a Stage 3 funding application will be accepted.
169. The IRO is examining what other individual cases might benefit from early intervention. Stakeholders have suggested that low value Stage 3 matters where the amount in dispute is less than \$3,000 but the decision in question may still be of critical importance to the worker, might also benefit from Solutions intervention.

Findings

170. There is evidence that ILARS intervention in individual cases makes a significant community contribution. The Review Committee considers the Solutions function is consistent with the main goal of assisting in the early resolution of disputes.
171. The Solutions function can also operate at a more strategic level, to identify emerging industry trends in insurer decision making which may benefit from further analysis.
172. There may be an opportunity, as part of the BPR, for the IRO to evaluate the client journey and explore better integration of the operations of ILARS and Solutions, ensuring that opportunities for early solutions are fully explored.
173. The Review Committee also considers consultation with key stakeholders including insurers, facilitated by IRO, could potentially identify other ways to find early solutions through better consistency and merit assessment in insurer decision making.

Recommendation

174. That IRO consult with key stakeholders, including insurers to identify additional opportunities to implement early solutions, to advise of any identified trends in insurer decision making, and to facilitate better consistency and merit assessment in insurer decision making.

J. ILARS FUNDED FEES

175. The Guidelines include schedules detailing the fees paid to solicitors, barristers and for disbursements. In the legal costs structure, the IRO seeks to ensure a balance between value for money services and providing sufficient incentive to ensure appropriately skilled lawyers are available to provide assistance to workers.
176. The pricing arrangement should support the system objectives and in order to do so, the arrangement should meet the following criteria:
- Support the financial viability of the scheme.
 - Promote early resolution of claims.
 - Ensure that suitably qualified lawyers apply to become Approved Lawyers.
 - Accommodate the work usually required to be performed.
 - Ensure that lawyers are fairly remunerated for the work undertaken.
 - Be easy and cost-effective to apply in practice and not be administratively burdensome for either the IRO or Approved Lawyers.
 - Encourage practitioners to adopt effective approaches to the conduct of litigation to promote early resolution of claims.
177. The Guidelines establish a Staged Fee funding arrangement in the Schedule to the Guidelines, whereby the professional fees are set for different stages of the dispute. The arrangement is similar to that adopted by the Victorian Transport Accident Commission, Queensland Government Insurance Office, and to the arrangements adopted by many insurers in respect of their legal panels.
178. The work required within each stage is not prescribed, although the guidelines broadly describe the expected outcome of the stage, and some of the likely work required to achieve that outcome.
179. A lawyer can apply for an increase in professional fees where:
- A matter has involved significant additional work due to complex issues;
 - There are multiple respondents, or
 - There are multiple resolutions within the same proceedings or matter
180. The decision whether to increase the professional fees payable in a particular matter is entirely within the IRO's discretion. Between July 2021 and March 2022, 244 matters were awarded complexity increases, at a total cost of \$347,173, an average of \$1,423 per matter¹⁷.
181. The IRO reviews have provided some direction on how the discretion is exercised, and summaries are published - see for example 'Review of request for complexity increase' in IRO News (nsw.gov.au).
182. The Guidelines do not currently include any provision for review of the Guideline fees.
183. In 2020, ILARS released the Guidelines (an updated version of the 2019 Guidelines), having undertaken a review of the WIRO Funding Policy and Grant Amounts Technical Review of the 2019 Guidelines. This included a review of the funding arrangement and fees for each stage. ILARS produced an explanatory memorandum which detailed the reasons for adjustments to the funding arrangement and fees. It is apparent that the review included consideration of the work undertaken in each stage and whether the fee for each was reasonable.

¹⁷ Internal IRO data

184. The fees in the 2020 Guidelines were increased in 2021 but there has been no increase in 2022.

185. The Issues Paper canvassed:

- whether the current Staged Fee approach for professional fees (i.e. the pricing arrangement) under ILARS is appropriate;
- whether the fees themselves are fair and reasonable;
- whether there should be clear criteria for when a complexity uplift will be allowed; and
- whether there should be a regular review of the fee schedule and whether it should be indexed.

Feedback

186. None of the submissions to the Review suggested an alternative to the current staged fee pricing arrangement. The ALA noted that an outcomes-based pricing model was preferable to a combined time based and event-based costing model.

187. The ALA and the Law Society submitted that, as the Guideline fees had been set by reference to Schedule 6, with the fees in that Schedule not having been adjusted for 7 years at the time the 2019 Guideline fees were set, a review of the fees should be undertaken.

188. The ALA also submitted that the Guideline fees as currently set are not reasonable, resulting in a number of firms and practitioners no longer participating in the ILARS.

189. iCare noted that the Fee Schedule in the ILARS Guidelines (the **Guideline fees**) are higher than those available to insurers and included additional stages set out in Schedule 6 of the Workers Compensation Regulation 2016 (Schedule 6). It submitted that an explanation was required for this difference, and how it contributed to system objectives and improved outcomes for workers and employers¹⁸.

190. The submissions of the NSW Bar Association encouraged the IRO to review the level of fees paid to Approved Lawyers and Barristers. It noted that the costs of legal practice had been steadily increasing without a comparable increase in fees payable under ILARS. The NSW Bar Association noted that the professional costs payable to Approved Lawyers were increased by 10 per cent in 2020 but there was no equivalent increase to counsel fees.¹⁹

191. The NSW Law Society submitted that the fee currently payable for Stage 1 work does not adequately compensate an Approved Lawyer having regard to the scope of work required to provide such an advice.²⁰

192. The NSW Bar Association submitted that the current fee schedule for counsel does not appropriately compensate counsel when taking into account the scope of the work which counsel properly undertakes.²¹

193. The NSW Bar Association submitted that most matters involve:

- one if not more conferences with the client before the listed conciliation/arbitration hearing;
- review of voluminous briefs (over 1,000 pages) which often take between 2-3 hours to consider and prepare for the hearing; and
- remaining available for conciliation/arbitration hearings which often run over three hours.

¹⁸ iCare submission – pg 2

¹⁹ NSW Bar Association Submission – pg 3

²⁰ NSW Law Society Submission – pg 4

²¹ NSW Bar Association Submission – pg 4

194. The NSW Bar Association also submitted that counsel's fee for an early advice is inadequate where the briefed material is poor.
195. The NSW Bar Association submitted that the fees schedule is not adequate in complex and protracted matters and submitted that the Guidelines be amended to ensure that the Officer has *"flexible, general discretion to permit increased fees in appropriate cases"*.²²
196. The NSW Bar Association further submitted that the IRO should provide more guidance about the circumstances where a complexity uplift is appropriate, to provide assistance to practitioners and the IRO.
197. The NSW Bar Association and the NSW Law Society agreed that the Guideline fees should be reviewed on a regular basis. Both recommended that it be benchmarked against CPI. The NSW Law Society noted that an annual review would align with SIRA increases to Fees Orders under the 1998 Act.
198. SIRA submitted that any increases should be subject to actuarial review to ensure the financial viability of the scheme.

Findings

199. The Review Committee considers that the staged funding arrangement is the optimal pricing model. Staged funding arrangements have many advantages over other models. This includes:
 - They provide an incentive for a lawyer to progress the matter in a timely fashion, as payment for work undertaken is not available until the matter concludes.
 - The fee schedule provides certainty to both IRO and Approved lawyers, which is not present in item-based scale and hourly rate arrangements.
200. In turn, this certainty reduces the administrative burden for both the IRO and Approved Lawyers, in that once approval is granted, with limited exceptions, it is only necessary for both parties to confirm that fees being sought have been approved. In time or scale-based arrangements, there is an administrative burden for the lawyer in preparing the detailed invoice, and for IRO in reviewing the itemised invoice. Further, both time and scale-based arrangements arguably provide an incentive to undertake more work and thereby delay finalisation of a matter, in that the fee paid is higher if more work is performed and more time taken.
201. The structure of fixed fees enables IRO to undertake financial modelling, forecasting expenditure and thereby consider the financial viability of the scheme.
202. A staged fee arrangement incentivises lawyers to adopt a streamlined approach to matter management, and to upskill to maximise the likelihood of early resolution, and identification of claims which do not have merit.
203. It is possible to promote early resolution by "front loading" fees. The downside of such front loading can be that a lawyer is not properly remunerated for pursuing a matter which has merit, or is a test case, in the Commission. This can be addressed by allowing for uplifts for complex matters, as discussed further below.
204. The level of fees needs to reflect the balance between competing objectives – the financial viability of the scheme and providing sufficient incentive to lawyers with experience in workers compensation matters to participate in the scheme. The Review Committee acknowledges that any increase in fees flows through to insurance premiums.

²² NSW Bar Association Submission – pg 5

205. In regard to the impact of the Guideline Fee on the scheme, the Review Committee notes that insurers, including self-insurers, have a level of control over the number of matters which are funded. Other submissions suggested evidence of inconsistent decision making and erroneous rejection of claims by less experienced claims managers, or delays in decisions, all of which resulted in matters being funded which should have been accepted as legitimate claims.
206. The Review Committee considers that the Schedule 6 fees are not an appropriate benchmark against which to measure whether the Guideline Fees are reasonable. It notes that the stages in the Guideline Fees and the Schedule 6 stages do not align, and therefore it is not possible to undertake a proper comparison of the two cost schedules.
207. The Review Committee agrees that the Stage 1 advice is important, both to ensure the injured worker is aware of their rights, but also as a means of identifying errors on the part of the insurer, which can form the basis of negotiations with the insurer resulting in early resolution.
208. An increase in the fee in this stage, a further front loading of the fees, may have the net effect of an overall reduction in the fee paid in each matter, if the more effective advice contributes to early resolution.
209. Consideration could be given to a further incentive payment for early resolution. For example, a loading for matters which resolve in Stage 1 by negotiation. Balanced against this is the need to ensure that any resolution truly benefits the worker.
210. The issue of counsel fees for early advice being inadequate where the briefed material is of a poor standard goes to the quality of the work undertaken by Approved Lawyers when briefing counsel. The Review Committee suggests that the appropriate way to address this is for counsel to communicate their concerns about the adequacy of the brief to their instructing solicitors, and if no proper response is received, to raise the concern with the IRO.
211. In relation to the NSW Bar Association's submissions that the fees be amended to take into account the additional work undertaken by counsel in more complex matters, a staged funding arrangement is a swings and roundabouts approach, with some matters involving more work than others.
212. However, the Review Committee notes that the Guidelines at 5.2.6 allow for an increase of counsel fees in complex matters.
213. The Review Committee noted the submissions of the NSW Bar Association regarding increases to fees paid by insurers to counsel but notes that this is beyond the remit of this Review.
214. The Review Committee notes the submissions in relation to complex claims and the recent increase in the number of claims involving psychiatric injury, which often involve additional work.
215. At present, the amount of the complexity allowance is entirely within the IRO's discretion. The Review Committee notes the recent increase in the number of claims involving psychiatric injury, and submissions regarding the complexity of such claims.
216. The Review Committee recommends that the Officer consider in what circumstances an increase should be allowed for complex claims and whether an automatic loading for matters which meet the relevant criteria will increase consistency in decision making and reduce the administrative burden. It will be necessary to undertake financial modelling of the impact of any such loading.

217. The Review Committee considers that there is merit in the IRO providing more guidance as to what constitutes “complex issues” and the information required to be provided in support of the application for a complexity loading. This will improve internal decision making in the exercise of discretion and ensure that lawyers only make application for increases in matters.
218. The ALA’s submission that the current fees are insufficient to retain the participation of legal firms is not supported by the evidence. The number of Approved Lawyers has been constant, suggesting that lawyers remain interested in participating in the scheme. There is no evidence that injured workers are unable to find an Approved Lawyer.
219. The Review Committee notes the NSW Bar Association submission that the level of counsel fees should be increased and has made a recommendation in this regard.
220. A distinction must be drawn between a high-level review of the level of fees and work in each stage, and a root and branch review which considers the structure of the overall pricing arrangement for a portfolio of work.
221. The Review Committee notes that other fee schedules, such as scales of costs, are indexed to ensure that the level of fees remains reasonable. The most common benchmark for indexation is CPI relevant to legal practices and the Review Committee recommends that the Guideline Fees be annually adjusted by reference to this benchmark or another appropriate benchmark, such as increases in SIRA fee orders.
222. The Review Committee considers that a high-level review of the level of fees, having regard to any changes to the work required to be undertaken, should be undertaken every three years.
223. This review should be undertaken with feedback provided by the Practice Note User Group in relation to changes to work practices, and what is accepted as best practice within the industry regarding conduct of the work, with the Guidelines Reference Group also engaged in this review.
224. The Review Committee considers there is a current need for a root and branch review of the overall pricing arrangement as no such review was undertaken at the time the Guideline Professional Fee schedule and Guideline Disbursement Schedule of Counsel fees was developed. The Review Committee does not consider that Schedule 6 was the appropriate benchmark for the development of the Guideline Fee Schedule, noting that it had not been updated for 7 years at the time it was used as the reference for the ILARS fees
225. The Review Committee considers there are three aspects to be taken into account in a root and branch review. Firstly, whether the scope of anticipated work within the stage has changed in any way. Secondly, whether the fee provides fair remuneration for the expected work. Thirdly, the fee structure should reflect ILARS’ strategic objectives. At present, these include early resolution, and it would be expected that the fee structure would provide an incentive to finalise matters as early as possible.
226. When looking at whether the fee reflects fair remuneration, it is necessary to understand the swings and roundabouts nature of a Staged fee arrangement, whereby some more complex matters are balanced by the greater number of less complex matters. The fees should be considered assuming that an Approved Lawyer will undertake multiple matters each year, rather than whether the fee for a single matter reflects fair remuneration. Whilst this may appear unfair to a lawyer who rarely undertakes workers compensation matters, an underlying feature of the ILARS scheme is to ensure that experienced skilled lawyers provide the legal assistance to workers.

227. In undertaking a root and branch review, the Review Committee recommends that stakeholder consultation should be undertaken regarding the scope of work within each ILARS funding stage and what is best practice in conducting the work, having regard to the utilisation of technology, changes in the approach adopted by insurers, any trends in the nature of claims which might impact the scope of work, and whether there have been any changes in practices and requirements at PIC.
228. The Review Committee recommends that the Guidelines Reference Group be engaged to provide this input.
229. In setting fees for each stage, it is necessary to set a nominal hourly rate. Whilst ideally fees could be benchmarked, a consideration of possible benchmarks assumes that such benchmarks are themselves reliable.
230. One possible hourly rate benchmark is the rates set by the NSW Attorney General - Attorney General's rates for Legal Representation (nsw.gov.au). But these rates should be considered as a maximum for benchmarking purposes, as they reflect rates for a range of complex work including in superior courts. Any benchmarking against solicitor hourly rates should also consider the fact that some of the work within the ILARS stages will properly be undertaken by paralegals and law clerks.
231. Other potential hourly rates for benchmarking are:
- Queensland Uniform Civil Procedure Rules 1999 Schedules 1 and 2
 - Legal Profession Uniform Law Application Regulation 2015 - Schedule 2
232. Further possible benchmarks of staged fees are:
- the Victorian Transport Accident fee schedules
 - the Victorian Workcover fee schedules
 - Queensland Uniform Civil Procedure Rules 1999 Schedules 2
 - Victorian Magistrates Court scale of costs
233. These are not reliable benchmarks as the scopes of work differ from those in the Guideline Fees.
234. An analysis of the ILARS data regarding the number of applications by stage, and ideally with some further detail about the nature of claims (e.g., psychiatric injury), will assist with modelling the stage and overall fees. This is relevant to the question of how the fees are structured to align with ILARS strategic objectives.

Recommendations

235. That the Staged Fee arrangement be retained, as best meeting the ILARS scheme objectives.
236. That the fees for Stage 1 are reviewed having regard to the typical scope of work in that stage, best practice in the industry and whether a loading of those fees to incentivise early finalisation is desirable.
237. That the Officer develop guidance about "complex issues", the circumstances in which a complexity increase will be allowed for such claims and the supporting material required to assess an application for a complexity loading.
238. That the Officer consider developing a set loading or range of complexity loadings by reference to different criteria to increase consistency in decision making and reduce the administrative burden.

239. That the Officer undertake a root and branch review of the Guideline Professional Fee and Counsel Fee Schedule.
240. That the Fee Schedule be indexed to CPI or another appropriate benchmark, with annual adjustments.
241. That a three yearly review of the level of fees be undertaken, having regard to any changes to the work required be undertaken and industry best practice, together with the impact on the scheme of any change in the fees.
242. Any review of the funding amounts by the Officer should seek input from relevant stakeholders including SIRA.

K. SHOULD SCHEDULED FEES BE EXCLUSIVE OF COUNSEL FEES?

Present State

243. Part 5.2 of the Guidelines deals with counsel's fees and details the circumstances in which it is appropriate to brief counsel. Counsel's fees are currently paid separately to the fees payable to solicitors, as disbursements. The Issues Paper asked whether this approach was appropriate.

Feedback

244. The NSW Bar Association submitted that counsel fees should remain separate to the Approved Lawyer's fees, as to incorporate them within a fee payable to the Approved Lawyer was likely to reduce the use of counsel, leading to inferior outcomes for injured workers.

Recommendation

245. The Review Committee considers counsel's fees should continue to be paid as a disbursement, separate to the professional fees of Approved Lawyers.

L. DISBURSEMENTS

Present State

246. The Guidelines define disbursements as “*expenses incurred by a Lawyer in relation to claim for compensation*”. The Guidelines provide disbursements will be funded where it is reasonably necessary to conduct investigations, obtain evidence, or incur expenses to progress a claim or matter. The staged approach to funding embeds pre-approval for most types of disbursements relevant to the funding stage, with capacity for other disbursements to be incurred with prior approval from the IRO.
247. Many of the disbursements incurred by Approved Lawyers are items where a fee is fixed by the SIRA or in the Disbursement Schedule to the Funding Guidelines.
248. The IRO pays directly for medicolegal expert reports obtained by Approved Lawyers through the sixteen Medical Report Providers (**MRPs**) with which the IRO has entered into an arrangement. Other disbursements are paid by Approved Lawyers and then recouped from the IRO, at the conclusion of a matter.
249. The Committee was informed that in 2021-22 the IRO paid out approximately \$29.8M in professional disbursements.
250. The Issues Paper sought feedback on the “reasonably necessary” test, the arrangements with MRPs and the arrangements for funding interpreters

Feedback

251. The Law Society considered that the “reasonably necessary” test for funding disbursement is appropriate but noted there are inconsistencies in the application of the test by the IRO staff.
252. The Bar Association suggested that consideration be given to funding fees for reports from important treating medical practitioners at Stage 1 if a matter has some complexities. The Bar Association also noted that some solicitors did not realise what disbursements were permitted once they have secured funding at Stage 2 and suggested there could be additional information provided about the available disbursements at that funding stage.
253. The Bar Association expressed concern regarding a possible reluctance on the part of some solicitors to engage interpreters for the taking of statements. The Law Society and other submissions did not raise any issues about the ability to obtain funding for interpreters.
254. There were no submissions in relation to the operation of MRPs.

Findings

255. The Review Committee agrees that the “reasonably necessary” test be retained as the test for funding a disbursement. It recommends, however, that a Practice Note be developed in consultation with stakeholders, to provide guidance about the application of the test. This will support decision making consistency and transparency.
256. Whilst there were no submissions in relation to the operation of MRPs, the Review Committee notes that, in 2020 the IRO identified a 70% increase in the number of clinical notes paid by IRO between 2018/19 and 2019/20. The IRO suggested a number of possible reasons for the increase, with the most likely being the ease of request for such reports utilising MRPs electronic platform.
257. This goes to the question of what reports are “reasonably necessary” and when they should be requested (i.e., at what stage). The Review Committee notes that the IRO had previously indicated that it would undertake a closer analysis of the reasons for the increase in requests for clinical notes and considers that this should take place if it has not already occurred. The outcome of such analysis can inform the development of the Practice Note.
258. We note the introduction of advice funding carried with it a preapproval of clinical notes. This expanded the scope of what was reasonable and necessary for the purpose of providing advice to the worker and obtain a proper history.
259. The current guidelines provide that the test of whether the disbursement is reasonably necessary is applied by IRO after the event – at the time the Approved Lawyer submits an invoice. This can result in the Approved Lawyer bearing the cost of the disbursement if it is not approved by IRO. However, the Review Committee agrees that this approach is preferable to a requirement that a disbursement be pre-approved, given the administrative burden to both IRO and Approved Lawyers of such an approach.
260. The development of guidance providing clarity on the reasonably necessary test can reduce the likelihood of a disbursement not being approved.
261. The Review Committee considers that the Guidelines are sufficiently clear regarding the ability of an Approved Lawyer to arrange interpreter services.

Recommendations

262. That IRO develop a Practice Note in consultation with stakeholders, to provide guidance about the application of the “reasonably necessary” test.
263. That IRO undertake a review of the process for monitoring medical report expenses for reports obtained through MRPs and put in place controls to ensure that the “reasonably necessary” test applies to these reports.

M. ILARS FUNDING ARRANGEMENTS - ADMINISTRATION

Present State

264. The Guidelines provide legal costs will be paid on conclusion of the work, resolution or final determination of the claim or dispute which is the subject of the grant of funding. An Approved Lawyer requests funding via a Tax Invoice which is submitted to the IRO.

Feedback

265. Stakeholders have commented in feedback to both this review and user experience surveys, that the ILARS invoice processing practices could be streamlined and supported with more detailed practical guidance.

Findings

266. The Review Committee notes IRO improvements to invoicing practices are a focus of the BPR.

N. APPEAL COSTS

Present State

267. The Guidelines provide that, generally speaking, appeals will be funded conditionally where the worker is the proposed appellant/applicant. Unconditional funding will be considered on a case-by-case basis, where the IRO is satisfied the matter has reasonable prospects of success.
268. Where a worker is the respondent to an appeal, the matter will generally be funded unconditionally.
269. Clause 3.4.5 of the Guidelines provides that, where ILARS funds a matter unconditionally, it will cover *“fair and reasonable party-party and solicitor-client costs, including filing fees, reasonable counsel’s fees and other reasonably necessary disbursements”*.
270. Clause 3.4.5.1 provides that Approved Lawyers *“should seek a mutual assurance or undertaking from the insurer that neither party will seek to enforce a costs order made by the Court. Alternatively, that each party will bear its own costs”* and that if a worker is successful, costs will not be pursued against the insurer/other party. It also provides that generally, the IRO will not indemnify a worker where a costs order is made in favour of an insurer.
271. The current policy means that in relation to appeals the cost burden is borne by the IRO when costs could have been pursued against the insurer, be it either iCare or a self or specialised insurer.

Feedback

272. The NSW Law Society’s feedback was:
- As the Supreme Court and the Court of Appeal are costs shifting jurisdictions, workers should not be prevented from seeking a costs order against the insurer if they are successful
 - Where a worker is successful in Court, but no costs order is made, ILARS should pay the worker’s costs at commercial rates
 - Where a worker is a respondent to an appeal ILARS should continue to provide funding, and where the worker is successful and a costs order is made, the unsuccessful party should be responsible for the payment of the worker’s lawyer’s costs
 - Where a worker is a respondent and unsuccessful, ILARS should be responsible for payment of the worker’s costs
 - It is very difficult to obtain an undertaking not to pursue costs from insurers, especially self-insurers. This requirement should be abolished
 - The IRO should set a fixed rate/scale for funding appeals

Findings

273. The Review Committee considers these arrangements would benefit from clarification and the current requirement to seek a mutual assurance as to costs could be re-examined.

Recommendation

274. Acknowledging that work is continuing within the IRO on this policy, the Review Committee recommends that the IRO continue this work and that it clarifies the following:

- Workers should seek a costs order to be paid by insurer if they are successful in an appeal (whether as applicant or respondent)
- If a worker is successful in an appeal, but the Court declines to award costs, the IRO will fund the appeal
- If a worker is unsuccessful in an appeal (as applicant), that the IRO will not pay their costs
- The IRO will fund the costs of an injured worker where they are respondent to an appeal
- The method by which costs will be assessed

O. FUNDING FEDERAL JURISDICTION MATTERS

Present State

275. The Guidelines do not provide specific funding for federal jurisdiction matters, which cannot be heard by the PIC and must be referred to the District Court. These matters usually arise when the worker lives interstate.
276. The District Court is a costs shifting jurisdiction, meaning that costs will usually follow the event.
277. IRO has issued a policy for funding Federal jurisdiction matters²³ which sets out a number of principles that guide funding of Federal jurisdiction matters and sets a schedule of fees.
278. The funding principles for Federal matters include the following:
- Consistent with other matters funded by ILARS, legal advice and assistance to the worker should be at no cost to them
 - Costs are only payable for matters which are resolved on the basis of payment of statutory benefits, and no costs will be payable for matters which resolve claims for damages
 - The 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
 - The IRO will generally not indemnify a worker where a costs order is made in favour of a Respondent/Defendant by the Court
279. On 27 May 2022 the District Court handed down its first decision on the federal jurisdiction issue so far as workers compensation claims are concerned (*Ritson vs State of NSW*)²⁴.
280. In that case, Judge Neilson concluded:
- “Accordingly, I proceed on the basis that, if PIC could not order the Plaintiff to pay costs because of his unsuccessful claim, then neither should this Court”.*
281. This suggests the District Court may adopt a practice of not ordering costs in workers compensation matters.
282. The Review Committee notes that the IRO is reviewing the implications of this decision and may amend its Federal Jurisdiction Funding Policy accordingly.
283. As a matter of governance, the Review Committee suggests that when finalised, the principles of the Appeal Costs Policy and the Federal Jurisdiction Funding Policy should be incorporated into the Guidelines and other IRO practice guidance.

Recommendation

284. The Review Committee recommends that the IRO include the finalised principles of the Appeal Costs Policy and the Federal Jurisdiction Funding Policy in the Guidelines and other IRO practice guidance.

²³ Federal Jurisdiction Funding Policy

²⁴ *Ritson vs State of NSW*

APPENDIX A

Terms of Review

The Review will examine the current arrangements to manage and administer the ILARS, and enable the effective achievement of its statutory purpose, that is to:

- provide funding for legal and associated costs for workers under workers compensation legislation seeking advice regarding the decisions of insurers under this legislation; and
- provide assistance in finding solutions for disputes between workers and insurers.

The Review will examine whether the current Guidelines promote relevant objectives of the workers compensation system as set out in section 3 of the *Workplace Injury Management and Workers Compensation Act 1998* including those focused on:

- the prompt and effective treatment and rehabilitation of workers following injuries to assist them and promote return to work, as soon as possible;
- providing income support for injured workers during periods of incapacity, and lump sum payments for permanent impairment and death;
- fairness, affordability, and financial viability; and
- efficiency and effectiveness.

In view of the concurrent reviews of business processes, appeal costs review and user experience surveys being undertaken by IRO, the ILARS Review will focus on the Guidelines, the allocation and amount of funding for legal and associated costs, arrangements for Approved Lawyers and the role played by Solutions.

The ILARS Review is intended to be broad in scope. Matters that may be examined include (but are not limited to):

- arrangements for approving legal service providers to provide advice and assistance to injured workers.
- arrangements for dealing with funding applications and requests, including funding for investigations (such as obtaining clinical notes and medical reports/assessments) and advice of counsel.
- promoting early solutions for claims and disputes through ILARS; and
- grant amounts for professional fees and disbursements.

Conduct of the Review

The ILARS Review was overseen by an independent Review Committee. They comprise experts in legal costs, public administration, and the provision of legal services to injured workers.

The Review Committee members are:

- *Shane Butcher* – Shane is a principal at Law Partners and an Accredited Specialist in Personal Injury Law. He is an Approved Lawyer under the ILARS scheme, with extensive experience in providing legal services to injured workers. He is a member of the Rules Committee of PIC, the Law Society of NSW's Injury Compensation Committee and the Australian Lawyers Alliance.

- *Elizabeth Harris* – Elizabeth is an expert costs lawyer and principal of Harris Costs Lawyers and Ovid Consulting. She is former joint editor of ‘Quick on Costs’ and serves as a member of the National Legal Services Council and Victorian Legal Services Board.
- *Michael Talbot* – Michael is a former Deputy Secretary, Courts and Tribunal Services at the then NSW Department of Justice. He was previously a senior executive at Australia Post. He is currently a senior consultant and independent director on the Boards of the Uniting Church and the Australian Disputes Centre.

The Review Committee was supported by a Secretariat within the IRO.

Reference Group

A Reference Group was established to inform the ILARS Review, comprising representatives of workers compensation system stakeholders including government agencies, lawyers, workers, insurers and employers.

The Review Committee was greatly assisted by the expertise and insights of the Reference Group, and thanks the organisations that participated:

- Australian Industry Group
- Australian Lawyers Alliance
- iCare
- The Law Society
- NSW Bar Association
- PIC
- Self-Insurers Association
- SIRA
- Unions NSW

Issues Paper

The Review Committee published an Issue Paper on the IRO website and invited feedback, with a closing date for submissions of 8 July. The Issues Paper posed 46 questions grouped around the themes of

- Overall Operation of the ILARS Scheme and the ILARS Guidelines
- Approved Lawyers
- ILARS Grants – Funding Structure; Amounts; Appeals and Disbursements
- Discretion
- Early Solutions for Disputes
- Reviews of Funding Decisions

Written submissions in response to the Issues Paper were received from the following:

- Albury Legal
- Bellissimo Lawyers
- iCare
- SIRA
- Law Society of NSW
- NSW Bar Association
- Australian Law Association

The Principal Policy Officer met with stakeholders including several law firms that are frequent users of the ILARS scheme:

- Walker Law Group
- Turner Freeman
- Stacks Goudkamp
- Brydens
- LHD Lawyers
- Law Partners
- IDA Legal
- Santone Lawyers
- Slater and Gordon

Several internal workshops were held with IRO staff.