



Independent
Review Office

IRO Regional Seminars

Southern and Northern NSW Seminar (online event)

March 2025

IRO acknowledges traditional owners



I acknowledge the Gadigal people of the Eora Nation, the people upon whose ancestral lands IRO stands. I pay respect to the Elders both past and present, acknowledging them as the custodians of knowledge for these lands



Agenda

- **Welcome** – Jeffrey Gabriel, Director Solutions
- **Personal Injury Case Law Update** – Jeffrey Gabriel, Director, Solutions
- **ILARS Update** – Philip Jedlin, Director, ILARS
- **IRO Solutions Update** – Jeffrey Gabriel, Director, Solutions
- **Federal Diversity Jurisdiction – What happened next?** – Michelle Riordan, Manager Legal Education
- **IRO Priorities 2025 and Closing Remarks** – Jeffrey Gabriel, Director Solutions and Philip Jedlin, Director, ILARS



Independent
Review Office

Personal Injury Case Law Update

Jeffrey Gabriel

Director Solutions

Cases – Workers Compensation

Surveillance as evidence of capacity

- *Bruzzese v Burwood City Council [2024] NSWPIC 663* – Member Burge
 - Psychological injury
 - Multiple attendances at PIC
 - Surveillance as evidence of capacity
 - Cross examining person with psychological injury
 - Conduct of insurer and staff

Cases – Workers Compensation

Section 9A and death claim

- *Huang v Noni B Holdings Pty Ltd & Ors [2024] NSWPIIC 671* – Senior Member Beilby
 - Allergic reaction to nuts found in a carrot cake purchased on the coffee run
 - Issue – was employment a substantial contributing factor to injury that resulted in death? Held – yes
 - Currently on appeal

Cases – Workers Compensation

Section 11A and host employer

- *Makdessi v Millennium Security Specialist Services Pty Ltd [2025] NSWPICPD 3* – ADP Parker
- Host employer directed IP to work on a different site
- Application of *Jeffrey v Lintipal Pty Limited [2008] NSWCA 138*
- Evidence (lack thereof) as to employer direction
- Onus on employer to make out 11A defence

Cases – Workers Compensation

Functional Neurological Disorder after a stressor

- *Petronio v State of New South Wales (Northern NSW Local Health District) [2025] NSWPIC 32* – Member McDonald
 - Claim for psychological injury and functional neurological disorder
 - Lack of contemporaneous evidence
 - Applying *AV v AW [2020] NSW WCCPD 9*

Cases – Motor Accidents

Lacerations to the skin as non-threshold injury

- *Allianz Australia Insurance Limited v The Estate of the Late Summer Abawi [2024] NSWSC 1245* – Griffiths AJA
 - Definition of soft tissue in 1.6(2) of MAIA
 - Under appeal
- *Sam v QBE Insurance (Australia) Limited [2025] NSWPICMP 1* – Member Harris, Assessors Couch and Lahz
 - Right arm injury pleaded (among others). Abrasion that healed within two weeks = non-threshold
 - Ongoing entitlements stat bens and common law for other injuries found to be threshold injuries

Cases – Motor Accidents

Causation and pre-existing injuries

- *Mahroei v QBE Insurance (Australia) Limited [2024] NSWPICMP 339* – Member Harris, Assessors Barrett and Baker
 - Two different motor accidents.
 - Psychological injury pleaded in both
 - Threshold injury dispute for the latter accident

Cases – Motor Accidents

Best endeavours to resolve a claim for damages

- *Kaur v Transport Accident Commission [2024]*
NSWPIC 177 – Member Ford
 - Section 7.32 (3) MAIA
 - 17 days between claim for damages and application in Commission
 - Best endeavours are mandatory

Cases – Motor Accidents

Claim for economic loss lacking in substance

- *Park v Insurance Australia Limited t/as NRMA Insurance [2024] NSWPIA 225* – Member White
 - 74-year-old pensioner in an MVA
 - Supplementary statement alleged work and loss of income
 - Need evidence to substantiate claim

Cases – Motor Accidents

Commencement of statutory benefits – due search and enquiry

- *Najjar v Insurance Australia Limited t/as NRMA Insurance [2024] NSWPIA 328* – Member Bolton
 - Section 6.13 of the MAIA
 - Clause 8A MAI Regulation
 - Backdating of benefits
 - When is a valid claim made?

Cases – Motor Accidents

Proving causation

- *Isaac v AAI Limited t/as AAMI [2024] NSWPICMP 364*
 - Member Macken, Assessors Barnsley and Couch
 - 79-year-old claimant
 - Scan 18 months post accident shows partial tear
 - Degenerative or frank injury?

Cases – Motor Accidents

Contributory negligence in single vehicle accidents

- *McDonough v Youi Pty Limited [2024] NSWPIIC 445* – Member Cassidy
 - Single vehicle accident on a motorcycle
 - Sections 3.11 (weeklies) and 3.28 (treatment and care) MAIA
 - Expert evidence regarding crash and speed

Cases – Motor Accidents

Home renovations as attendant care services?

- *Lau v QBE Insurance (Australia) Limited [2024] NSWPIIC 724 – Member Cassidy*
 - Treatment and care – Section 1.4
 - What is an everyday task?
 - Purpose of the task is relevant

QUESTIONS





Independent
Review Office

ILARS Update

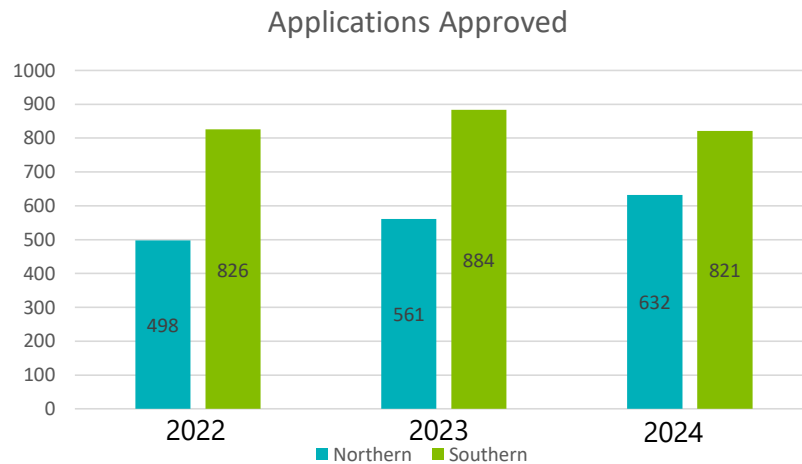
Phil Jedlin

Director ILARS

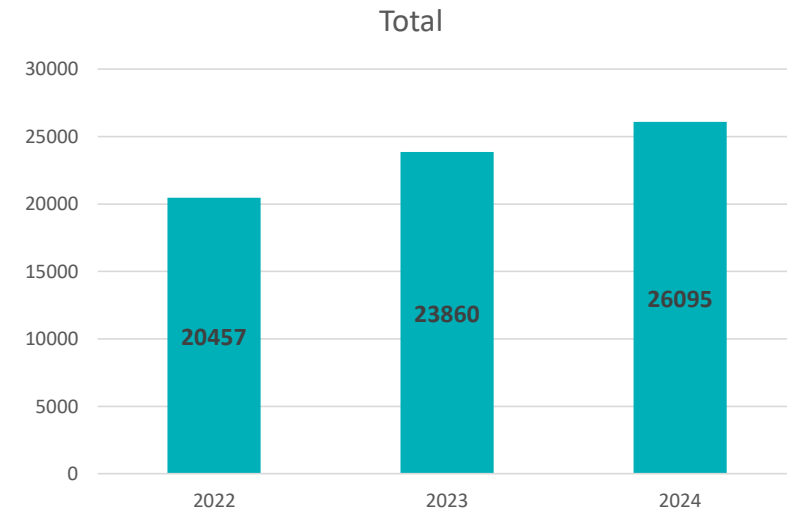
Applications Approved

Your region includes for Northern – North Coast and Queensland and for Southern - South Coast, ACT, Murray, Riverina and Victoria
Data used is for calendar years

Your Region

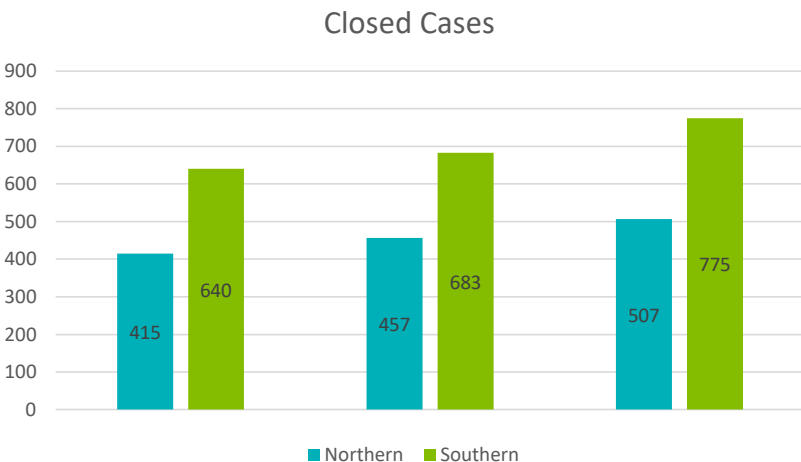


All Firms

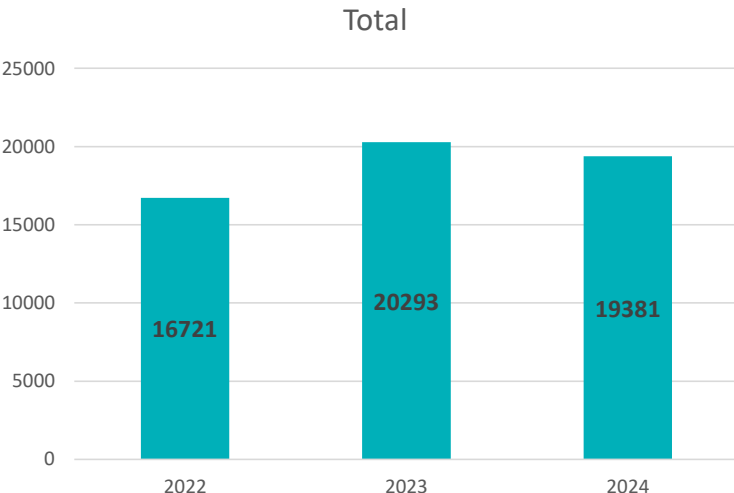


Closed Cases

Your Region



All Firms



Stages of Cases

Stages	Northern	%	Southern	%	% all Firms
Stage 1	239	33%	402	34%	31%
Stage 2	367	50%	549	46%	51%
Stage 3	121	16%	216	18%	16%
Stage 4	4	1%	3	0%	0%
Stage 4 Conditional	4	1%	13	1%	1%

Injured persons in your Region



	Hearing	Lower extremity	Psychiatric and psychological disorders	The spine	Upper extremity	Grand Total
Southern	7	265	342	362	465	1441
All other Regions	1401	731	1280	979	1271	5662
Total	1408	996	1622	1341	1736	7103
Percent of matters managed by AL's in your region	0%	27%	21%	27%	27%	20%
-Excluding Hearing loss						25%
Northern	12	240	375	361	342	1330
All other Regions	1036	489	996	681	835	4037
Total	1048	729	1371	1042	1177	5367
Percent of matters managed by AL's in your region	1%	33%	27%	35%	29%	25%
-Excluding Hearing loss						31%



Where do your injured workers come from



Southern	Hearing	Psychiatric and				Grand Total
		Lower extremity	psychological disorders	The spine	Upper extremity	
South Coast	2	135	211	205	250	803
Riverina	5	95	101	112	166	479
ACT	0	29	27	32	39	127
Murray	2	30	19	31	38	120
Sutherland	1	6	21	15	10	53
Other Region	4	100	269	118	152	643
Total	14	395	648	513	655	2225

Northern						
North Coast	12	209	351	319	313	1204
Queensland	0	31	24	42	29	126
South Coast	0	5	9	12	11	37
Tamworth	0	4	5	14	9	32
Hunter	1	1	4	7	10	23
Other Region	0	21	46	19	32	118
Total	13	271	439	413	404	1540



Outcomes of cases for 2024



Summary Outcome		Final Outcome		No Final Outcome		Total	
All Firms	Number	Percentage	Number	Percentage	Number	Percentage	
Advice only	0	0%	4654	39%	4654	22%	
Pre-Proceedings	5190	54%	10	0%	5200	24%	
Commission or Court	4416	46%	187	2%	4603	22%	
Other Outcome	12	0%	6934	59%	6946	32%	
Grand Total	9618	100%	11785	100%	21403	100%	
Percentage	45%		55%				
Southern							
Advice only	0	0%	130	29%	130	16%	
Pre-Proceedings	158	40%	1	0%	159	19%	
Commission or Court	235	60%	2	0%	237	28%	
Other Outcome	0	0%	308	70%	308	37%	
Grand Total	393	100%	441	100%	834	100%	
Percentage	47%		53%				
Northern							
Advice only	0	0%	115	38%	115	21%	
Pre-Proceedings	104	43%	0	0%	104	19%	
Commission or Court	135	56%	4	1%	139	26%	
Other Outcome	1	0%	184	61%	185	34%	
Grand Total	240	100%	303	100%	543	100%	
Percentage	44%		56%				



Application for Grants issues - 2022-24



Issue	All Regions		Northern		Southern	
	Number	%	Number	%	Number	%
Request for further information	7202	7%	114	5%	381	9%
Remind Request for further information	942	13%	14	12%	36	9%
Average time to approve application	4.3		3.8		4.4	
- All accepted applications (Days)						
Where NO request made for further information (Days)	3.0		2.8		3.1	
Where a request is made for further information (Days)	24.5		23.0		23.2	



Applications



Supporting material

Explanation of the merit/arguable case of a request for funding

Details of insurer's response to claims. Be Mindful of the timeframes for responses to claims by Insurers.

Requests for Updates

Correct ILARS reference in the subject line in correspondence

Accurate details in application for funding

Attaching PDF's, not links



Invoices - 2022-24



Issue	All Regions		Northern		Southern	
	Number	%	Number	%	Number	%
Invoices processed from law firms	58102		1484	3%	1930	4%
Number of cases with invoice errors	14134	23%	464	29%	562	26%
An invoice may have more than one issue and may be returned more than once						
Grant related issues	13420	23%	404	27%	676	35%
Invoice related issues	6325	11%	240	16%	331	17%
Issues with MRP invoices	3184	3%	89	3%	117	2%



Invoices in Your Region - Requests for amendment



Grant related errors	All Regions	Northern	Southern
Disbursements exceed approved funding	19%	22%	22%
Legal cost exceed approved funding -	20%	19%	23%
Supporting documents not supplied	53%	54%	46%

Invoice related errors

No unique invoice number-	7%	12%	10%
Wrong amount -	45%	40%	42%
Wrong GST -	12%	17%	16%
No Date	13%	9%	11%



Recurring Themes

Unique tax invoice number

Only one event number for costs per Tax invoice can be used (except for appeals)

Date Missing or incorrect

ILARS reference incorrect or missing

GST added to disbursements

Recurring Themes continued



Incorrect amounts

Copies of medico-legal reports

Specify the Doctor, date of examination and category of report

EFT details

Format –PDF is required

Invoices do not tally

Impact of Invoice errors



Causes a failure in the payment system



Multiple interactions



Causes delay in the payment of the invoice

Improving how we Communicate with each other



- Requesting Director Reviews
 - Clause 2.12 specifies that a request for a review may be made at any time and must be made by a Lawyer.
 - A Lawyer is defined in clause 1.4 as an 'Approved Lawyer'.
 - This means that requests for reviews of funding decisions should not be made by paralegals or lawyers in your office who are not IRO Approved Lawyers.
- IRO appreciates that much of the work done on a case is not done by Approved Lawyers, however
 - ILARS expects that initial applications for funding and requests for reviews of funding decisions are sent to IRO by Approved Lawyers.



Improving how we Communicate with each other



- Please send your email to [ILARS Contact Inbox](#) for
 - New grant applications
 - If you have a necessary urgent application (ensure to include "URGENT" in the subject line)
 - Additional invoices for closed cases
 - Non-case related emails

For **existing** ILARS Matters,

- If you receive a response from our Grant Managers, respond to [ILARS Mail Inbox](#) ONLY
- When sending new emails to an existing case, ensure to include the ILARS case number – C/NN/YYYYY or G/NN/YYYYY in the subject line and **do not** cc the ILARS Grant Manager's personal email or other ILARS email boxes.
- For an **Extension of Stage Funding request**, submit as a new email (i.e., not replying to previous emails) to the [ILARS Mail Inbox](#) with the subject line "Stage ** Extension of Funding".
 - This will assist with prompt assessment and reallocation of your request. Failure to address the subject line in this manner, will cause delay in assessment of your request.
- For Disbursement only funding requests, **do not** use the words "Extension" or "Extension of Funding" within the request, for correct allocation of your funding request.
- Where you receive an email from the ILARS team requesting 'further information' please reply to that email (to [ILARS Mail Inbox](#) ONLY) with the same subject line.
- Include only 1 ILARS case number in the subject line – please ensure this is the current case and not a closed case.



Improving how we Communicate with each other



- Last year we exchanged approximately 2700 emails from you.
- Approximately 90 of these emails had an error which sent them to our exceptions email box where one of our team have to open the email, work out what it is about and forward it to the grant manager.
- It helps improve the time it takes to respond to your emails if we can reduce the number of emails going to the exception box.
- The most common reasons emails going to the exception box are
 - Grant applications are still being sent to ILARSALmail
 - There is no Grant Number in subject line
 - There are spaces & or no “/” in the grant number eg G 24 12345 or G_24_12345
 - Multiple grant numbers in subject line or another grant number mentioned in body of email
 - CLOSED grant numbers are in the subject line



Improving how we Communicate with each other



- IRO sends a number of communications to stakeholders including Approved Lawyers.
- These include IRO Alerts, ILARS practice Notes, IRO Bulletin and IRO News
- These are sent to Approved Lawyers and others who sign up to receive these publications on the website - [Sign up to IRO Publications](#)
- It is important that all staff who are involved in Workers Compensation sign up so they can receive important messages from IRO.
- Many of the errors we receive in mail messages are from staff in your offices who have not received or read our publications
- We also encourage you to circulate the above to all your Workers Compensation Team members



QUESTIONS





Independent
Review Office

IRO Solutions Update

Jeffrey Gabriel

Director Solutions

Topics to be covered

- Overview of IRO Solutions function
- What makes a good complaint and response
- Trends and issues raised in IRO Solutions 2023-24 and 2024-25
- Early solutions work

Topics to be covered

- Case studies
- After the complaint is closed
- Responding to feedback
- Challenges facing IRO Solutions (and all of us)

IRO Solutions functions

- Enquires from workers compensation customers.
- Complaints from both workers and CTP customers (Schedule 5, Part 4 of the Personal Injury Commission Act 2020).
- Early solutions (Schedule 5, Clause 9(2) – “to provide assistance in finding solutions for disputes between workers and insurers”).

IRO Complaint Handling Protocol



- The IRO Complaint Handling Protocol (CHP):
- Defines how we deal with matters including our approach to finding ‘fair and reasonable’ solutions.
- Sets out when we may decline to deal with a matter.
- Provides complainants the right to seek a review of an IRO decision to decline or close a complaint.



What makes a good complaint

- Chronology
- Evidence substantiating allegation
- Evidence attempting resolution before IRO
- Proposed solutions
- Poor complaint can → IRO declining to deal with the complaint

What makes a good response

- When responding to a complaint, we value insurers who:
 - Share a relevant chronology, including details of any attempts to resolve things with the customer directly – is there a reason why the matter remains unresolved?
 - Provides a paper trail showing actions taken – emails, letters, file notes etc.
 - Propose fair solutions – SIRA's Customer Service Conduct Principles provide a benchmark for insurer service delivery and accountability.

Closing or Escalating a Complaints



- Covered in CHP:
 - Does solution address complaint?
 - Is solution fair and reasonable?
 - Should IRO take it further or someone else?



Workers Compensation Matters

Financial year	Enquiries	Complaints
Jul to Dec 2024	3417 (up 4%)	4,711 (up 15%)
2023/24	6,947	8,302
2022/23	7,687	7,306
2021/22	7,502	6,396

Top five WC complaint issues FY2023/24



Primary Issue	No.	% of all complaints
Delay in determining liability	2,472	30%
Delay in payment	1,877	23%
Denial of liability	829	10%
General case management	751	9%
Weekly benefits	732	9%

Motor Accident Matters

Financial year	Enquiries	Complaints
Jul to Dec 2024	163 (down 53%)	459 (up 28%)
2023/24	544	806
2022/23	982	877
2021/22	472	799

Top five CTP complaint issues FY2023/24

Primary Issue	No.	% of all complaints
Treatment and care	229	28%
Income support/weekly benefits	196	24%
Case manager	97	12%
Claim payments	66	8%
Threshold injury	44	5%

Trends and Issues – Complaints

- Average days to close a WC complaint – 6.2 days
- Average days to close a CTP complaint – 9 days
- Observations
 - **Causes** of delays
 - Similar issues in CTP and WC complaints

IRO Early Solutions



- Specifically called out in PIC Act
- No Response to Claim (NRTC)

TIP: If NRTC – carefully check timelines and check with insurer before seeking Stage 3 funding

- Other early solutions



Trends and Issues – Complaints from Solicitors



- Complaints from Lawyers on behalf of claimants
 - Around 29% of all WC complaints (2023-24)
 - Around 20% of all CTP complaints (2023-24)
- Most common issues in WC complaints raised by lawyers
 - Delay in determining liability 41% (29% from all)
 - Request for documents 22% (10% from all)
 - Delay in payment 18% (23% from all)



Case Studies – Workers Compensation

- Delay in weekly benefits
 - Concurrent employment
 - Putting insurer to proof on payments made
- Work capacity decision
 - Change of address in Certificate of Capacity
 - Insurer cited verbal notification
 - New WCD remade

Case Studies – Workers Compensation

- Reasonable Excuse and Section 11A
 - Use of case law to show not a valid RE
 - Provisional payments as a solution
- Suspension of weekly benefits
 - Multiple complaints
 - Cited Section 270 of 1987 Act.
 - Should have cited 1998 Act

Case Studies – Motor Accidents

- Calculation of Pre-Accident Weekly Earnings (PAWE)
 - Discretion to deal with complaint
 - Use of case law
- Treatment and care - IME venue
 - Ins refused request to change venue of IME
 - IRO queried compliance with MAG 4.155
 - IME vacated as treatment provider addressed queries

After the complaint is closed



- IRO Engagement Strategy
 - Law firms
 - Insurers
 - Regional / Sydney Seminars
- SIRA MOU
 - Data sharing, Ops meetings
- Icare engagement
 - Ops meetings



Responding to feedback

- Feedback from IRO Engagement Strategy
 - When IRO declines complaints
- FiftyFive5
 - Case closures
 - Standard templates
 - Better questioning

Challenges for Solutions Et Al

- Volume of Complaints
- Increasing Share of Psychological Injuries
- Litigation Mindset
- Scheme design and legislative reform

QUESTIONS





Independent
Review Office

Federal Diversity Jurisdiction - What happened next

Michelle Riordan

Manager Legal Education

Relevant decisions

- ***Kanajenahalli No. 3 [2023] NSWCA 202***
- ***McKeown v Secretary, Department of Education* (unreported)**
- ***Chetty v Queanbeyan-Palerang Regional Council [2024] NSWDC 12***
- ***Ramsay v Southern NSW Local Health District;***
- ***Manning v Sydney Trains;***
- ***Honey v Robert Sheridan Family Trust;***
- ***Duncan v Department of Education;***
- ***Magnan v Upper Shire Council [2024] NSWDC 326***

What we now know:

- ***Federal diversity jurisdiction*** describes matters in which the High Court of Australia has original jurisdiction, including matters between:
 - (1) A State and a resident of another State; and
 - (2) Residents of different states.
- ***The PIC is not a Court of a State*** for the purposes of ss 75–77 of the *Constitution* and s 39 of the *Judiciary Act (Cth)* and ***it lacks judicial power*** to determine matters that are subject to Federal diversity jurisdiction.

What we now know:

- In *Kanajenahalli No. 3*, the Court of appeal held that ***the PIC has administrative power to determine disputes*** in matters that are Federally-impacted.
- Determining a dispute under s 11A WCA ***involves an exercise of administrative power***.
- In *Ramsay, Manning , Honey, Duncan and Magnan*, the District Court held that determining disputes under ss 4, 4(b), 9A, 11A, 33 to 38 and 60 WCA also ***involve an exercise of administrative power***.

McKeown v Secretary, Department of Education (unreported)

- Section 11A dispute arose before the decision in *Kanajenahalli no. 3*.
- The worker applied to the District Court under s 26 of the PIC Act and sought remittal to the PIC.
- The respondent refused to consent to remittal and the Court decided not to remit it.
- The matter was listed the matter for a fully-contested 5-day hearing.
- Not reached in June 2023 and relisted in September 2023.

McKeown



- When the hearing commenced, the respondent advised the Court of the decision in *Kanajenahalli no. 3*.
- The Court remitted the matter to the PIC but it did not order the respondent to pay the costs thrown away as a result of its refusal to consent to remittal.
- The matter cost the Operational Fund counsel's fees exceeding \$49,000 and professional fees exceeding \$24,000.
- The dispute was ultimately determined in the PIC based on a MAP decision.



Ramsay; Manning; Honey; Duncan & Magnan

[2024] NSWDC 326



- The Attorney-General intervened in these matters under s 26 of the PIC Act.
- IRO funded Senior Counsel to appear for the plaintiffs, in order to obtain a determination about what disputes involve the exercise of judicial power and/or administrative power.
- Judge Waugh SC heard the matters together and gave judgment on 7/08/2024.



Ramsay; Manning; Honey; Duncan & Magnan

- The Court held that if determining the dispute in the PIC “*would involve an exercise of federal jurisdiction*”, it could grant leave for it to proceed in the District Court under s 26(3) of the PIC Act.
- However, if it was satisfied that the PIC “*has jurisdiction to determine it*”, the matter can be remitted to the PIC under s 26(5) of the PIC Act.
- The Court held that the PIC had jurisdiction to determine all disputes between the parties, and it remitted them to the PIC under s 26(5).

Ramsay; Manning; Honey; Duncan & Magnan



- The Court held that in *Searle*, the Court of Appeal held that whether a determination by the PIC involves an exercise of Federal jurisdiction raises the question of whether it would be purporting to exercise judicial power.
- Two critical questions must be addressed in an application under s 26:
 - (1) What issues have arisen in the application to the PIC? and
 - (2) Would determining these issues involve an exercise of judicial power?
- The parties sought remittal to the PIC.



Ramsay; Manning; Honey; Duncan & Magnan

- In *Chetty*, his Honour held that determining a dispute issue under s.4(b)(i) WCA (whether employment was the main contributing factor to contracting a disease) involves issues of fact and this involves ***an exercise of administrative power***.
- Determining a s 9A dispute involves "*questions of impression and degree, and 'a finding as to relative contributing factors is a finding of fact'*": *Secretary, Department of Education v Dawking* [2024] NSWCA 4 per Gleeson JA (Mitchelmore and Kirk JJA agreeing) at [43]. In other words, it involves issues of fact.

Ramsay; Manning; Honey; Duncan & Magnan

- Determining disputes under ss 33 and 38 WCA, involve consequential calculations following the determination of issues of fact that arise under provisions such as ss 4, 9A and 11A WCA. These involve ***an exercise of administrative power***.
- A dispute under s 60 WCA does not depend on any breach of duty by the employer. It therefore ***does not involve*** an exercise of judicial power.

ILARS funding of federal jurisdiction matters

- Legal advice and assistance at no cost to worker
- Fund federal jurisdiction matters on a 'best equivalence' basis
- Additional work funded as complexity increase at Attorney General's rates
- Separate funding for Counsel

[Federal jurisdiction funding policy.pdf \(nsw.gov.au\)](#)

QUESTIONS





Independent
Review Office

IRO Priorities 2025 and Closing Remarks

Jeffrey Gabriel, Director, Solutions

Philip Jedlin, Director, ILARS