



## PERSONAL INJURY COMMISSION ACT 2020 | IMPLEMENTATION OF SCHEDULE 5

### Update 3 – 3 February 2021

#### Consultation draft ILARS Funding Guidelines; comments due by 17 February 2021

##### **Background**

The *Personal Injury Commission Act 2020* (Act) will commence on 1 March 2021 and introduces changes to the role, functions and operations of the Workers Compensation Independent Review Office (WIRO).

This includes re-establishing WIRO as the Independent Review Office (IRO) and providing for the Independent Legal Assistance and Review Service (ILARS) as a statutory function of the IRO.

The Act provides for the Independent Review Officer to issue guidelines for the allocation and amount of funding for legal and associated costs under ILARS, and for the guidelines to be published on the NSW legislation website and tabled in Parliament.

In our previous update, we advised that some minor amendments to the current ILARS Funding Policy (Policy) and Grant Amount Guide (Guide) would be proposed when implementing the Act and preparing the guidelines.

##### **New ILARS Funding Guidelines and supporting documents - opportunity for comment**

To give effect to the new requirements for publishing and tabling ILARS guidelines, the Policy and Guide have been consolidated into the ILARS Funding Guidelines (Guidelines), adopting the existing documents and including amendments summarised below.

The Guidelines largely reflect current practice with some reforms that have been the subject of extensive consultation with the profession both through seeking submissions and testing with a group of the most experienced Approved Lawyers.

Consultation drafts of the Guidelines and supporting documents are now available for your consideration and comment on the WIRO website:

[https://wiro.nsw.gov.au/sites/default/files/ILARS%20Funding%20Guidelines\\_Consultation%20Draft.pdf](https://wiro.nsw.gov.au/sites/default/files/ILARS%20Funding%20Guidelines_Consultation%20Draft.pdf)

Should you wish to provide comment please do so by email to the Director ILARS, Roshana May at [roshana.may@wiro.nsw.gov.au](mailto:roshana.may@wiro.nsw.gov.au) by no later than 4:00 pm, Wednesday **17 February 2021**.

The Guidelines will commence operation from 1 March 2021.

##### **WIRO Funding Policy**

Commencing in March 2020, WIRO conducted a Technical Review of the Policy released on 2 September 2019. This involved consultation with and feedback from Approved Lawyers and WIRO staff. The review found that, in the main the Policy is working as intended. However, some parts are not working optimally to the benefit of injured workers, the workers compensation scheme, or Lawyers, and are not in line with WIRO's funding principles, and therefore a number of reforms are proposed:

##### *1. Review of funding decisions*

The arrangements for review of funding decisions have been revised to include more detail and to align with the *WIRO Complaints and Compliments Policy*. This includes providing more information about when and how a review is conducted. These changes will increase the accountability of ILARS decision-making.



## 2. Stage 1

Stage 1 funding criteria have been revised to clarify the requirements for approval of funding and payment for grants completed at this stage. This includes making clear that there must be a solicitor/client relationship before a grant of funding can be sought, prescribing conditions for the payment of invoices at the conclusion of Stage 1 and providing more information about arrangements where more than one Lawyer seeks Stage 1 funding for the same worker.

## 3. Stage 2

Stage 2 funding criteria have been revised to clarify the merit test that must be met to qualify for an extension of funding to Stage 2.

## 4. Appeals (Stage 4)

Stage 4 funding criteria have been revised to clarify that full funding for worker-initiated appeals will be considered where the appeal has reasonable prospects and the matter involves an important question of law.

### **Grant Amount Guide**

Amendments to the Guide (which is now Part 6 of the ILARS Funding Guidelines) are proposed to better align professional fees with the work done by Lawyers to achieve an outcome, and have regard to the *Workers Compensation Amendment (COVID-19 Weekly Payment Compensation) Regulation* 2020 (COVID-19 Regulation) which introduced a 10 percent increase to all costs items specified in Table 1, Part B of Schedule 6 to the *Workers Compensation Regulation* 2016 (WCR 2016). These changes include:

- amending some event descriptions
- adding new events in Stages 1 and 2 to capture resolutions in the investigation and claims stage of funding more accurately, and reducing some fees for some Stage 2 events to better reflect the professional work involved
- removing or replacing events where there was ambiguity and the potential for misapplication of the Guide
- increasing the amount of professional fees for events directly affected by the increase to Schedule 6 provided for in the COVID-19 Regulation
- altering the professional fees at Stage 4 where counsel is briefed
- increasing the allowance for counsel's fees in some circumstances.

The following approach has been applied to reflect increases in Schedule 6 WCR 2016:

- where there is no directly referable Schedule 6 amount in the Guide and unless there is evidence that the current amount does not reflect the work undertaken to resolve a claim or dispute, no change has been made
- where there is a directly referable Schedule 6 item and the current Guide amount is in excess of the maximum 2020 Schedule 6 item, then unless there is evidence that the current amount does not reflect the work undertaken to resolve a claim or dispute, no change has been made
- where there is a directly referable Schedule 6 item and the current Guide amount is less than the maximum 2020 Schedule 6 item, the Guide amount has been adjusted to the nearest \$100 amount above the revised maximum Schedule 6 item.

### **Other WIRO documents**

In the course of the Technical Review, WIRO has revised and amended the following documents to reflect the changes made to the Policy and Guide:



- Application and Agreement to be a WIRO Approved Lawyer
- Practice Standards for WIRO Approved Lawyers
- ILARS Application Form for a Grant of Funding.

WIRO has also consolidated requirements for approval as an Approved Lawyer in new guidelines, the **Guidelines for approval as an IRO Approved Lawyer**. In the same manner as the ILARS Funding Guidelines, these guidelines are to be published on the NSW legislation website and tabled in Parliament.

These documents are also available for review and comment on the WIRO website as follows:

1. Application and Agreement to be an IRO Approved Lawyer -  
<https://wiro.nsw.gov.au/sites/default/files/Application%20and%20Agreement%20to%20be%20an%20IRO%20AL%20Final.pdf>
2. Guidelines for approval as an IRO Approved Lawyer -  
<https://wiro.nsw.gov.au/sites/default/files/Guidelines%20for%20approval%20as%20an%20IRO%20AL%20Consult%20final.pdf>
3. Practice Standards for IRO Approved Lawyers -  
<https://wiro.nsw.gov.au/sites/default/files/Practice%20Standards%20for%20IRO%20Approved%20Lawyers%20Final.pdf>

### **Publishing the new guidelines**

It is proposed that the new guidelines and associated documents will be published on or shortly after 24 February 2021. WIRO will publish a WIRE to advise of this publication.

**Simon Cohen**

**Independent Review Officer**

**3 February 2021**