



Independent
Review Office

Independent Legal Assistance and Review Service Funding Guidelines

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INTRODUCTION

About these Guidelines

These Guidelines are published by the Independent Review Officer.

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

Guideline-making powers

These Guidelines are made under Schedule 5, Part 5, clause 10(1)(b) of the *Personal Injury Commission Act 2020* which enables the Independent Review Officer to issue guidelines with respect to the allocation and amount of funding for legal and associated costs under ILARS.

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

Commencement

These Guidelines come into effect on 1 March 2021.

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

Replacement and transition

These ILARS Funding Guidelines replace the WIRO Funding Policy issued on 2 September 2019 as amended on 1 July 2020.

The WIRO Funding Policy continues to have effect in relation to grants of funding made before 1 March 2021 where a final outcome of the matter the subject of the grant is achieved **before** 1 March 2021.

These Guidelines apply to:

- applications for a grant of funding made or approved on or after 1 March 2021,
- applications for an extension of a grant of funding made or approved on or after 1 March 2021, and
- grants of funding made or approved before the commencement of these Guidelines where the final outcome of the matter the subject of the grant is achieved **on or after** 1 March 2021.

Interpretation of these Guidelines

These Guidelines should be read in conjunction with the related documents referred to in Part 1.8 below and the workers compensation Acts and Regulation, the *Personal Injury Commission Act 2020*, the *Personal Injury Commission Rules 2021*, Personal Injury Commission Procedural Directions and policies.

A reference in these Guidelines to a number of days is a reference to a number of business days unless otherwise specified.

A reference in these Guidelines to a Part is a reference to a Part in these Guidelines.

Application of these Guidelines

These Guidelines apply to all Approved Lawyers retained to provide legal assistance to workers subject to the changes effected by the *Workers Compensation Legislation Amendment Act 2012*.

These Guidelines do not apply to:

- coal miners, as defined in the 1998 Act
- workers with a dust disease, as defined in the *Workers Compensation (Dust Diseases) Act 1942*
- workers with claims made under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

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

Parts of these Guidelines

These Guidelines contain the following Parts:

1. Background and General Principles
2. Grants of Funding
3. Funding Stages
4. Legal Costs
5. Disbursement Categories
6. Grant Amounts

Compliance with these Guidelines

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

1. BACKGROUND AND GENERAL PRINCIPLES

Grants of funding are provided to enable injured eligible workers to obtain independent legal advice, assistance and representation with respect to their rights and entitlements to workers compensation benefits provided under the workers compensation legislation.

Grants of funding cover professional fees, counsel's fees, medical report fees and the cost of other disbursements and incidental expenses reasonably necessary to investigate a claim or to pursue a dispute about a claim.

1.1 System objectives

The *Workers Compensation Act 1987* (1987 Act), the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act), the *Workers Compensation Regulation 2016* (2016 Regulation) ('workers compensation legislation') together with Guidelines and Standards of Practice made under the legislation establish a **workplace injury management and workers compensation system** in New South Wales.

The system objectives are set out in section 3 of the 1998 Act. Objectives of the system relevant to these Guidelines are:

- *"To provide prompt treatment of injuries, and effective and proactive management of injuries, and necessary medical and vocational rehabilitation following injuries, in order to assist injured workers and to promote their return to work as soon as possible"*
- *To provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses*
- *To be fair, affordable, and financially viable*
- *To deliver [these] objectives efficiently and effectively".*

Lawyers are essential and important service providers in the NSW workers compensation system and are expected to provide advice and act in a way that furthers the system objectives and supports the functions and objectives of the Independent Review Officer, including promoting a worker's return to work and seeking to resolve claims and disputes as soon and as cost effectively as possible.

1.2 The Independent Legal Assistance and Review Service (ILARS)

1.2.1 Purpose

1.2.1.1 Historical context

With the passing of the *Workers Compensation Legislation Amendment Act 2012* section 341 of the 1998 Act provided that *"each party is to bear the party's own costs on or in relation to a claim for compensation"*.

ILARS was first established by the Minister for Finance and Services on 26 September 2012 in response to the government's decision to create a new legal assistance and review service offering free and independent access to legal advice and assistance.

ILARS was managed by the Workers Compensation Independent Review Officer (WIRO) and provided for the paid engagement of independent solicitors and barristers with experience in workers compensation.

ILARS was responsible for ensuring that injured eligible workers were able to access independent legal advice and assistance at no cost to them.

1.2.1.2 On and after 1 March 2021

The *Personal Injury Commission Act 2020* (PIC Act) establishes the Personal Injury Commission (Commission) commencing on 1 March 2021 to deal with certain matters under the workers compensation legislation and motor accidents legislation and provide a central registry for that purpose.

Schedule 5 to the PIC Act establishes the **Office of the Independent Review Officer** (IRO) and provides for the appointment of the Independent Review Officer.

Part 3 of Schedule 5 sets out the functions of the Independent Review Officer which include “to *manage and administer ILARS (including by issuing ILARS guidelines).*”

Part 5 of Schedule 5 of the PIC Act establishes the Independent Legal Assistance and Review Service (ILARS).

The **purpose** of ILARS is provided in clause 9 of Part 5, Schedule 5 and 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.”

Funding is paid out of the Workers Compensation Operational Fund.

1.2.2 ILARS Information | Purpose and Use

Schedule 5, Part 3, clause 6 of the PIC Act provides the Independent Review Officer with a broad oversight function to inquire into and report to the Minister on any matters arising in connection with the operation of the workers compensation Acts or the PIC Act as the Independent Review Officer considers appropriate.

Information collected by the IRO through ILARS in relation to grants of funding provides a significant and essential data set to assist the IRO perform this oversight function. The information collected enables the Independent Review Officer to assess the operation of the system, identify and monitor emerging trends, patterns and issues and develop informed commentary and recommendations about the system.

Amendments to these Guidelines following regular reviews are also informed by the information collected by the IRO through ILARS.

1.3 Scope of funding

ILARS funding is to ensure that **injured eligible workers** (see Part 1.5 below) are able to, at no cost to them:

- Obtain legal advice about their rights and entitlements (whether or not they may have a ‘claim’)
- Access legal assistance to explore and assert their rights and entitlements under the workers compensation legislation and to explore early resolution of disagreements or disputes
- Access legal representation to have their dispute about a claim determined in the Commission when it is unable to be resolved by agreement or early or alternate dispute resolution processes

- Access legal representation to pursue appeals both within the Commission and to higher Courts where appropriate.

There is a general presumption in favour of funding.

In the case of the death of an injured eligible worker, funding contemplated by these Guidelines extends to the legal personal representative of the estate of the deceased, and in the circumstances of a claim for death benefits under the workers compensation legislation, to the deceased worker's dependants or potential dependents.

1.4 Approved Lawyers

'Approved Lawyers' are Australian legal practitioners who have been approved by the Independent Review Officer to provide funded legal assistance to injured workers.

Only lawyers who have been approved by the Independent Review Officer are able to apply for grants of funding.

Approved Lawyers are subject to the **Agreement for the Provision of Legal Services by an IRO Approved Lawyer in the NSW workers compensation scheme** and the **Practice Standards for IRO Approved Lawyers**.

Approved Lawyers will be referred to as Lawyers in these Guidelines.

1.5 Eligible workers

Eligible workers are workers whose rights and entitlements to benefits under the workers compensation legislation are affected by the 2012 reforms to the legislation.

For the purpose of these Guidelines, this includes those who are the dependents of a deceased eligible worker or their legal representatives.

'Eligible workers' do not include the categories of workers exempt from the amendments made in the *Workers Compensation Legislation Amendment Act 2012*.

Exempt workers include police officers, firefighters, paramedics, coal miners, workers suffering a dust disease and workers subject to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

1.6 Early dispute resolution

The IRO is committed to achieving 'just, quick and cost-effective resolution of the issues in the claims and disputes of injured workers.

ILARS will provide an early opportunity for injured workers and insurers to resolve, a claim or a dispute about a claim.

The IRO may intervene in a matter the subject of a grant of funding where an opportunity arises for an early solution to a claim or dispute about a claim to be achieved.

1.7 Communication with the IRO

The operation of these Guidelines is predicated upon co-operation between the Lawyer and the IRO.

The IRO has developed **Practice Standards for IRO Approved Lawyers** to be read as part of these Guidelines.

The success of these Guidelines is reliant on Lawyers and the IRO being aware of and engaging

in accordance with a mutual set of standards which include:

- Acting in a courteous and professional manner in all written and oral dealings
- Communicating regularly as to the progress of the matter the subject of a grant of funding
- Promptly responding to reasonable requests for information about a grant of funding, or a funding issue.

The IRO may from time to time seek a progress report with respect to a grant of funding. Where an update is not provided within twenty business (20) days of a request, the IRO reserves the right to withdraw funding and close the grant.

1.8 Related documents

A range of additional guides and documents are relevant to the ILARS Funding Guidelines. These include but are not limited to the key documents listed below and any documents referenced within them:

Document name	Date	Issuer
ILARS Grant Application Form	1 March 2021	IRO
ILARS Tax Invoice Guide	1 March 2021	IRO
Application and Agreement to be an IRO Approved Lawyer	1 March 2021	IRO
Practice Standards for IRO Approved Lawyers	1 March 2021	IRO
Guidelines for approval as an IRO Approved Lawyer	1 March 2021	IRO
ILARS Industrial Deafness (Hearing Loss Claims) Practice Guide	1 March 2021	IRO
Guides to the Evaluation of Permanent Impairment 5 th Edition (AMA V)	November 2000	American Medical Association
NSW workers compensation guidelines for the evaluation of permanent impairment (PI Guidelines) (4 th edition)	1 April 2016	SIRA
Fees Orders	As made	SIRA
IRO Complaints and Compliments Policy	1 March 2021	IRO
IRO Unreasonable Conduct Policy and Procedure	1 March 2021	IRO

2. GRANTS OF FUNDING

2.1 General

2.1.1 Requirement for grant

A grant of funding is required for a Lawyer to claim payment of **legal costs** from the IRO.

2.1.2 Definition of legal costs

In these Guidelines “**legal costs**” means:

- costs for legal services provided by a Lawyer in relation to a claim for compensation (referred to as ‘**Professional Fees**’), and
- expenses incurred by a Lawyer in relation to a claim for compensation (referred to as ‘**Disbursements**’).

2.1.3 When an application should be made

An application for a grant of funding should be made once a Lawyer has received instructions from an injured eligible worker:

- to advise in relation to their workers compensation rights and entitlements, or
- to act in relation to a claim for compensation or decision of an insurer.

2.2 How a grant is sought

A grant of funding is sought by completion of the **ILARS Grant Application Form** (Application Form).

The Application Form sets out the information and documentation required depending on the nature of the work contemplated and identified by the Lawyer.

The email address for lodgement of Application Forms is ilarscontact@iro.nsw.gov.au.

The IRO will conduct all communication with a Lawyer electronically by email or by telephone.

2.3 Grant assessment process

On receipt of an Application Form into the IRO’s central email inbox, the application will be lodged into the IRO’s case management system.

The Application will be checked for completion requirements:

- Mandatory fields of information are identified on the Application Form and must be completed before the application will be processed
- The form must be signed by a Lawyer (electronic signature is permitted and constitutes an acknowledgement of all procedural and declaration requirements).

Following lodgement, the application will be allocated to an ILARS team member for assessment.

Every lodged application for a grant of funding will be allocated an ILARS case number regardless of whether a grant is ultimately approved.

Approval process:

Wherever possible, grants will be approved or declined within five (5) working days of the receipt of the Application Form.

Exceptions:

- Where there is no or insufficient information to support a grant approval the IRO may request further information to ground the approval of a grant.
- Where further information is required, assessment of the application will be finalised within five (5) working days of the provision of the information requested.
- Where information is not provided within twenty (20) business days the application will be closed and a new application will be required if a grant of funding is pursued.

2.4 Applications requiring urgent or immediate funding

Where circumstances necessitate an urgent or immediate assessment of a funding application the Lawyer should contact ILARS by calling **13 9476**. The process outlined in Part 2.2 should be followed in addition with an appropriate subject line 'urgent' marking in the email.

2.5 Approval of funding

The terms of a grant of funding will be communicated to the Lawyer in the IRO's Approval Letter.

2.6 Conditional funding

'Conditional funding' will be available in certain circumstances outlined in these Guidelines.

Where funding is approved on a conditional basis, the IRO will not meet disbursements or professional fees until the outcome is known. Payment of legal costs including incurred disbursements will only be made in the event of a '**successful outcome**' in the matter or aspect of the matter which receives conditional funding.

The responsibility to make arrangements to meet the disbursements incurred pending the outcome of the matter falls to the Lawyer.

In circumstances where an application for funding has been declined a Lawyer may seek conditional funding as an alternative.

For the purpose of these Guidelines, a '**successful outcome**' is one where the worker achieves a benefit from the conditionally funded matter or action. A benefit might be the acceptance of a body part injured in the course of employment or related to an injury, exceeding of an impairment threshold (such that benefits continue or do not cease), the continuation of benefits in circumstances where the benefit or meeting of the threshold was disputed or resisted by the insurer/employer, or a higher impairment assessment resulting in a lump sum benefit under section 66 of the 1987 Act.

2.7 Representation where claim for death benefits

The *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* provide that a solicitor and a law practice must avoid conflicts between the duties owed to two or more current clients, particularly where the clients' interests are adverse and there is a conflict or potential conflict of the duties to act in the best interests of each client (Rule 11).

Every dependant or potential dependant of a deceased worker should be separately represented by a Lawyer. Lawyers are referred to the Commission's 'Procedural Direction WC1 – Compensation payable on death'.

Lawyers should consider whether separate representation is required for each dependant or potential dependant, in particular where the dependant is a minor, under a disability and/or likely

to be in a position of conflict with another dependant or potential dependant.

The IRO can provide assistance in finding a Lawyer to provide representation for a dependant or potential dependant.

2.8 Multiple funding applications for the same injured eligible worker

Where there is an open grant of funding made to a Lawyer for an eligible worker relating to a specific date of injury or a specific insurance claim number, a further Application Form (for a new grant) is not required in order that the Lawyer canvass and advise the worker on new or emerging issues related to that injury or that claim.

It is expected that with a grant of funding a Lawyer will provide legal assistance with respect to both the specific issue (or issues) for which the grant has been made and the worker's rights to workers compensation benefits (and attendant obligations) generally.

Additional grants of funding may only be made where new issues or disputes arise that are so different in character or nature that a new grant is appropriate. Examples include a new and unrelated injury, a different employer, a different claim number and insurer, or a new decision that raises unrelated issues that will necessarily require a separate dispute resolution pathway.

A single grant of funding to a Lawyer can be used to encompass all issues with a decision, a claim or dispute about a claim during the life of the grant.

This does not affect the IRO's consideration of the amount of Professional Fees payable referred to in Part 4.1 below.

2.9 Where instructions are withdrawn and provided to a new Lawyer

2.9.1 New Grant Application Form required

Where there is an open approved (existing) grant of funding provided to a Lawyer at a law practice (the original Lawyer) and the worker subsequently instructs a Lawyer at *another law practice* (the new Lawyer) in relation to the same 'grant matter' before that matter has resolved or concluded, the new Lawyer should seek a new grant of funding for the worker *before* proceeding to undertake any work. A new Lawyer includes the situation where the original Lawyer has changed law practices.

2.9.2 Arrangement as to legal costs

The legal costs payable under the existing grant will be determined by the IRO and paid directly to the original Lawyer (or the original Lawyer's first law practice if they have changed law practices) upon provision of a Tax Invoice.

The legal costs under the new grant of funding will be assessed by the IRO in accordance with these Guidelines at the conclusion of the work under the grant.

Generally, the total legal costs paid to both Lawyers will not exceed the amount that would have been paid had the worker instructed only one Lawyer in the grant matter.

Lawyers can agree to the apportionment of legal costs where there is a transition of representation from the original Lawyer to the new Lawyer, and the grant will be apportioned in accordance with the agreement unless there are exceptional circumstances.

2.9.3 Exchange of files

It is expected that the original Lawyer (or law practice) will not claim a lien over a file and will ensure that the file in which a grant of funding has been approved will be transferred to the new

Lawyer upon receipt of the appropriate authority and without delay, even if the original Lawyer has not yet invoiced or been paid by the IRO. If the original Lawyer proposes to delay the transfer of the file, the Lawyer must contact the IRO and explain why the file will not be transferred without delay.

2.10 When a grant of funding is unavailable

Applications for grants of funding will not be approved in any of the following circumstances:

- The worker is not an 'eligible worker'
- The work to be undertaken is related to a work injury damages claim and not a statutory benefits claim
- The claim is for replacement hearing aids.

2.11 Applications for a grant of funding made after an event

Where proceedings have commenced in the Commission or proceeded to appeal in the Commission or Court **without** a grant of funding or extension of funding, the IRO generally will not pay legal costs incurred in the proceedings prior to any approval that may be subsequently sought.

2.12 Review of funding decisions

2.12.1 When the IRO will review a funding decision

A request for review of a funding decision may be made at any time by email in accordance with the directions in the IRO's letter advising of the decision. The request for review should specifically state why the Lawyer believes one or more of the circumstances set out below warrant such a review:

- Providing further information that would have impacted on the original decision
- Raising credible doubts about the reasoning used to justify the decision, and/or
- Identifying procedural failings about the way the decision was made or casting doubt on whether the procedure used was fair and appropriate.

2.12.2 What a review will consider

A review of a funding decision will re-examine the matter and consider whether:

- the original decision:
 - was fair and reasonable in the circumstances
 - was based on the evidence available at the time
 - needs to be reconsidered based on new information provided in support of the review request
- the process used to reach the decision was fair and appropriate, and
- the basis for the decision was adequately explained.

2.12.3 How a review will be conducted

A review of a funding decision will be conducted by the Director ILARS at first instance and a response will be provided within ten (10) working days of the receipt of the request.

2.12.4 Possible outcomes of a review of a funding decision

The outcome of a review will either be:

- to affirm the original decision, or
- to change that decision if an error in the original decision or decision-making process is identified, or new information warrants a different approach.

2.12.5 Final review

If the Lawyer is dissatisfied with the review decision a request for a further final review can be made to the Independent Review Officer. The final review decision will be advised as soon as practicable, and generally within ten (10) working days of receipt of the request.

2.13 IRO discretion

Funding approval is at the complete discretion of the IRO and will be considered on a case by case basis.

2.14 Lack of progress with grant matter

Where a grant matter remains open for a period of twelve (12) months without any progress, the grant matter may be closed without payment of legal costs.

The Lawyer is able to apply anew for a grant with evidence of refreshed instructions.

2.15 Refunds of payments made

Where legal costs are paid under a grant in circumstances where the injured worker is entitled to other compensation in respect of the same injury in a jurisdiction where the worker can recover legal costs, the IRO may seek a refund of legal costs or any part of the costs paid under the grant.

Lawyers are required to advise the IRO when a matter, the subject of a grant of funding, resolves in circumstances where legal costs are to be paid by another party, and make offer of reimbursement of the legal costs (including disbursements) met by the IRO (or an appropriate part of them) as soon as the legal costs are resolved in the other jurisdiction.

2.16 Grant Amounts

Once a grant of funding is approved, the IRO will meet the legal costs of the worker subject to the terms of these Guidelines.

Grant amounts are paid on the basis of outcomes achieved.

The IRO is not bound by Parts 1, 2 and 3 of Schedule 6 of the 2016 Regulation.

2.17 Staged Funding

The IRO has adopted a staged funding approach to simplify the funding structure and to ensure eligible workers can access early legal advice and legal assistance.

The IRO will determine the funding stage initially approved based on the information provided with the Application Form and the nature of the work contemplated and identified by the Lawyer.

The Stages of Funding do not necessarily coincide with a fixed amount of Professional Fees payable under the Professional Fees Schedule in **Part 6.3** of these Guidelines.

3. FUNDING STAGES

A Lawyer can apply at first instance for any stage of funding to allow them to proceed with the work encompassed by the grant, depending on circumstances and how much information/evidence is already available.

Once funding approval has been granted a Lawyer can apply for an **extension of funding**.

3.1 Stage 1

3.1.1 Purpose

Funding is available for Lawyers instructed by an injured eligible worker to determine whether they can provide assistance to pursue any rights and entitlements of their client under the workers compensation legislation.

This 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 enquiries (including obtaining information from the insurer, if relevant) and responding to a request for further information
- Commence investigations of any potential claim (including completing a worker's injury claim form on behalf of an injured worker and providing legal advice about the resultant decision of the insurer)
- Assess the prospects of disputing an insurer's decision
- Explore and achieve early solutions.

This list is not intended to be exclusive or exhaustive.

3.1.2 Where Stage 1 funding unavailable

3.1.2.1 Industrial deafness (hearing loss) claims

Stage 1 funding is not available for industrial deafness (hearing loss) claims. Grants of funding for industrial deafness (hearing loss) claims are dealt with in the **ILARS Industrial Deafness (Hearing Loss) Claims Practice Guide**.

3.1.2.2 Where new Lawyer seeks funding

Where a worker has been the beneficiary of Stage 1 funding and the grant has been paid to the Lawyer (the original Lawyer), and the worker subsequently approaches a new Lawyer(s) to determine whether they can provide assistance to pursue rights and entitlements, the IRO will deal with the matter consistent with the principles outlined in Part 2.9 above.

In particular, the new Lawyer will generally not be entitled to any professional fees at Stage 1, where Stage 1 fees have already been paid to the original Lawyer. Where, as a result of the assistance provided by the new Lawyer, the grant proceeds to further stages, an assessment will be made at the closure of the grant as to whether any funding should be provided for Stage 1 work undertaken by the new Lawyer, or whether instead the Stage 1 funding paid to the original Lawyer (or some portion of that payment) should be deducted from the professional fees payable.

3.1.3 Stage 1 Professional Fees

3.1.3.1 Where no further action contemplated

Where after completing the work contemplated in Part 3.1.1 above, a Lawyer determines that **no further action** or assistance is proposed to be taken or provided for a period of no less than twelve (12) months the grant of funding may be finalised. The Lawyer will be required to confirm this in writing at the time of providing a Tax Invoice.

Legal costs will be paid upon provision of a Tax Invoice in accordance with the **Professional Fees Schedule**.

A Tax Invoice can only be rendered at the expiry of three (3) months from provision of an initial comprehensive legal advice.

3.1.3.2 Where Lawyer unable to assist worker

In any circumstance where a Lawyer determines that a worker may have an entitlement to a benefit but is unable to assist the worker due a conflict of interest, lack of resources, or for any other reason, the Lawyer should inform the worker at the earliest possible time and direct the worker to the IRO for referral to a Lawyer who can assist the worker. In these circumstances, no professional costs will be paid to the Lawyer or law practice that is unable to assist the worker.

3.1.4 Deduction of Stage 1 Professional Fees where matter reactivated

Where a grant of funding is sought by a Lawyer for a client the subject of an earlier Stage 1 grant to the Lawyer, any paid professional fees where paid as a Stage 1 resolution will generally be deducted from the professional fees payable at the closure of the grant.

3.1.5 Stage 1 Disbursements

For the purpose of the work contemplated in Stage 1 funding the following categories of disbursements may be incurred only:

- Health records (clinical notes) from the worker's treating health service providers
- Health records (clinical notes) from public or private hospitals attended by the worker for treatment of the injury
- Fees for an interpreter, if required (see Part 5.4).

3.2 Stage 2

3.2.1 Purpose

Stage 2 funding is available to further investigate and pursue where possible:

- A claim for benefits
- A dispute about a decision, claim or any aspect of a claim
- The assertion of a threshold (except a threshold for a work injury damages claim)

including all work up to the commencement of proceedings in the Commission (including attempting resolution of the claim or dispute).

3.2.2 When extension of funding required

Stage 2 funding may be granted initially upon assessment of the Application Form.

Where Stage 1 funding only has been approved, an extension of funding to Stage 2 **is** required and should be requested by email (not by lodging a new Application Form).

3.2.3 Requirements for extension of funding

The Lawyer should provide an explanation or short reasons together with any evidence or material available which supports the request for funding or extension of funding and demonstrates that the purpose for which the extension is sought has some merit.

‘Having some merit’ means that there is a basis in fact and law to conclude that the worker has a claim or dispute to pursue which may result in a successful outcome.

Examples of required evidence or material:

- Where there is a decision which is disputed by the worker, the Lawyer should provide a copy of the decision notice.
- With respect to a proposed lump sum claim for permanent impairment the supporting material may include a statement from the worker and a brief explanation by the Lawyer outlining that they have considered the relevant impairment assessment criteria and are satisfied that the worker’s injury is such that the worker will meet or exceed the relevant threshold for the proposed claim.

Note: The ‘relevant impairment assessment criteria’ refers to the NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment 4th edition (PIG) (including, where relevant, the American Medical Association Guides to the Evaluation of Permanent Impairment Fifth Edition (AMA V), and with respect to psychological injuries, the Psychiatric Impairment Rating Scale (PIRS) in Chapter 11 of the PIG).

Where insufficient information is included with an initial application for Stage 2 funding, the IRO may approve Stage 1 funding and ask that a request be made for an extension of funding to Stage 2 once further information becomes available.

3.2.4 Stage 2 Professional Fees

Stage 2 contemplates further work including the engagement in appropriate matters of a medico-legal expert to support a claim or dispute about a claim and the making of a claim or notification of a dispute about a claim or any aspect of a claim.

Where a matter does not proceed after investigation, or where a matter resolves prior to the commencement of proceedings in the Commission, professional fees are as set out in the **Professional Fees Schedule**.

3.2.5 Stage 2 Disbursements

Pre-approval is generally not required for the incursion of disbursements or expenses.

If there is any doubt about whether the IRO will meet the cost of a disbursement, the Lawyer should seek confirmation by contacting the ILARS Principal Lawyer dealing with the grant before proceeding to incur the fee.

Lawyers are referred to Part 4.2 for disbursement funding principles and restrictions, and Part 5 for the categories of disbursements and expenses.

3.3 Stage 3

3.3.1 Purpose

Stage 3 funding is available to pursue dispute resolution proceedings in the Commission.

3.3.2 Where funding will be granted

Funding will be granted to commence proceedings if:

- An arguable case for the worker can be demonstrated, and
- Reasonable steps have been taken to achieve early resolution of the matter with the insurer, including seeking a review, if appropriate.

3.3.3 Requirements for Stage 3 funding

An application is made either by way of the Application Form (if no prior grant of funding for the same worker and same date of injury has been made), or by a request for **extension of funding** (by email) if there is a grant of funding to which is attached relevant information in support of funding (if not already provided).

3.3.4 Where amount in dispute is less than \$3,000

Where the amount in dispute is less than \$3,000 funding will not be granted to commence proceedings in the Commission except in the following circumstances:

- The application for funding is in respect of a claim or potential claim for further lump sum compensation pursuant to clause 11, Schedule 8 of the 2016 Regulation,
- The injured worker suffers financial hardship,
- Clarification of the law is required,
- It is in the public interest for the dispute to be determined, or
- There is an overriding interest of fairness that the injured eligible worker has the dispute determined.

3.3.5 Timeframes for referrals of disputes to the Commission

The Commission generally requires a Lawyer to certify that the worker is entitled to lodge with it an application because it satisfies the statutory procedural requirements under sections 289 or 289A of the 1998 Act and clauses 44, 45 and 46 of the 2016 Regulation.

In addition, the Commission requires that when commencing or replying to proceedings, parties must comply with the PIC Act, the *Personal Injury Commission Rules 2021 (PIC Rules)*, any applicable Procedural Directions issued under section 21 of the PIC Act and the requirement of the Form commencing the proceedings (refer to Procedural Direction PIC1).

Except in limited circumstances, section 289 of the 1998 Act provides that a dispute cannot be referred for determination by the Commission unless the insurer disputes liability for the claim (wholly or in part), fails to determine the claim or, with respect to a claim for lump sum compensation, makes an offer of settlement within timeframes and a period of one (1) month has elapsed as required by the Act.

3.3.6 IRO process where no response by insurer to claim or review request

Where the insurer has not responded to a claim or a request for a review within timeframes and/or attempts to resolve the dispute with the insurer have not been made or such attempts have not been successful, the IRO may seek to engage with the insurer in an attempt to resolve the outstanding dispute or claim or to obtain a response from the insurer.

Where the IRO engages with the insurer, the IRO's correspondence to the insurer and any response from the insurer (generally received within five (5) working days) will be provided to the Lawyer. The IRO will generally not grant Stage 3 funding during this period.

Careful note should be taken of the 'Postal Rule' requirement of seven (7) working days: section 76 of the *Interpretation Act 1987 (NSW)*.

Approval of funding to proceed to the Commission will generally be provided at the expiry of the relevant legislated timeframe plus the postal rule period noting that where there has been no response to a claim by an insurer, Part 3.3.5 will apply.

3.3.7 Provision of information to the IRO during Commission proceedings

The Lawyer should provide the IRO with sufficient information about the proceedings and the listing of the matter, which may include:

- A copy of the Form lodged [without attachments]
- A copy of the Commission Timetable for proceedings
- A copy of the Reply lodged by the respondent [without attachments]
- Details of the insurer's legal representative
- The date and time fixed for conference and hearing
- The name of the counsel briefed
- A copy of Directions issued by the Commission
- A copy of Orders, Certificates or outcome documents including Certificates of Determination, Statement of Reasons, Consent Orders, Elections to Discontinue, Medical Assessment Certificates, Appeal Panel Certificates, and the like.

Information should be provided to the IRO as soon as it is available.

3.3.8 Stage 3 Professional Fees

Professional fees are as set out in the **Professional Fees Schedule**.

3.3.9 Stage 3 Disbursements

Pre-approval is generally not required for the incursion of disbursements or expenses.

If there is any doubt about whether the IRO will meet the cost of a disbursement, the Lawyer should seek confirmation by contacting the ILARS Principal Lawyer dealing with the grant before proceeding to incur the fee.

Lawyers are referred to Part 4.2 for disbursement funding principles and restrictions and Part 5 for the categories of disbursements and expenses.

3.4 Stage 4 – Appeals and Reconsiderations

3.4.1 Timeframes for appeals

Timeframes for appeals are specified in the legislation and are generally twenty-eight (28) days or less.

The IRO recognises that time is of the essence for the approval of funding.

The IRO will consider an extension of funding for an appeal in the categories set out in these Guidelines on terms as set out below.

3.4.2 Categories of appeal

The categories of appeal considered in these Guidelines are:

- Appeal against a decision of the Commission constituted by a Non-Presidential Member

- Appeal against a medical assessment of a Medical Assessor certified in a Medical Assessment Certificate
- Referral of a workers compensation question of law to the Commission constituted by the President
- Appeal (by way of application for judicial review) against a direction or decision of the Commission (to Supreme Court)
- Appeal (by way of application for judicial review) against a decision of an Appeal Panel (to Supreme Court)
- Appeal against a decision of the Commission constituted by a Presidential Member (to Court of Appeal)
- Appeal against a decision of the Supreme Court
- Appeal against a decision of the Court of Appeal.

3.4.3 Extension of funding required for appeals

A request for an **extension of funding** is required for an appeal under the original grant.

3.4.3.1 Manner of request for extension of funding for appeals

The Lawyer should bring an extension of funding request with respect an appeal to the attention of the ILARS Principal Lawyer *by telephone* as soon as possible.

In addition, a request for an **extension of funding** should be made by email (preferably marked 'URGENT APPEAL FUNDING') and should attach relevant documentation to enable consideration of approval of the extension.

3.4.3.2 Documentation required for extension of funding for appeals

An extension of funding request should be accompanied by relevant documentation which may include:

- The decision or certificate from which the appeal is sought
- Counsel's advice or written submissions on appeal prospects to support the funding request, if relevant (see below)
- A copy of the Appeal Application, Summons or other Court document (if the worker is the respondent to the appeal)
- A copy of any timetable for proceedings (if the worker is the respondent).

3.4.4 Funding available for appeals

3.4.4.1 Where the worker is the proposed appellant/applicant

Generally, **conditional funding** will be provided where the worker is the proposed appellant or applicant. Conditional funding is provided in accordance with Part 2.6 of these Guidelines.

Full funding (unconditional funding) will be considered by the IRO for *worker-initiated appeals* on a case by case basis. An advice or written submission should be provided that addresses why there are reasonable grounds for believing, on the basis of provable facts and a reasonably arguable view of the law, that the appeal has reasonable prospects of success, and why the matter involves an important question of law.

The IRO will fund counsel's advice to support a request for full funding.

Full funding is **not** available for appeals from a medical assessment of a Medical Assessor certified in a Medical Assessment Certificate where the worker is the proposed appellant.

3.4.4.2 Where the worker is the respondent

The IRO will provide **full funding** (unconditional funding) to a worker named as respondent to any appeal.

Lawyers should notify the IRO on receipt of the appeal application or notice of appeal from the appellant party and as soon as possible.

3.4.5 Where appeal is to a Court

Where the appeal is to a Court, **full funding** (unconditional funding) when granted extends to fair and reasonable party-party and solicitor-client costs and includes filing fees, reasonable counsel's fees, and other reasonably necessary disbursements.

3.4.5.1 Costs orders in Court proceedings

In Court proceedings, the Lawyer should use their best endeavours to seek a mutual assurance or undertaking from the insurer that neither party will seek to enforce a costs order made by the Court or alternatively that both parties will seek an order that "each party is to bear its own costs". While this is not a condition of approval of funding, the IRO expects that efforts will be made by the Lawyer to secure this arrangement for the benefit of their client.

It is expected that if the worker is successful in Court proceedings, a costs order will not be pursued against the unsuccessful insurer appellant or respondent and that an account for full costs will be provided to the IRO for approval and payment.

The IRO generally does not indemnify a worker where a costs order is made in favour of an insurer by the Court.

3.4.5.2 Provision of cost agreements

The IRO requires a copy of the Lawyer's cost agreement with the worker in respect of the Court proceedings and counsel's fee agreement in order that IRO can consider and approve the proposed rates prior to conclusion of the proceedings.

3.4.6 Notification required of any appeal

The IRO will only consider payment of costs for an appeal where the IRO is notified prior to or at the time of the appeal being lodged or responded to. The IRO generally will not extend funding if first notice of the appeal is provided at or after finalisation.

3.4.7 Reconsiderations

3.4.7.1 Where a reconsideration application accompanies an appeal

Where a reconsideration application is made as a precursor to an appeal to rescind a determination of the Commission, funding will be provided on the same basis as the appeal, not in addition to the appeal.

3.4.7.2 Where the worker seeks reconsideration on a stand-alone basis

The IRO will **conditionally fund** the following reconsideration applications:

- Referral for further medical assessment by Medical Assessor: Section 329 of the 1998 Act
- Reconsideration of decision by Commission or Appeal Panel: Section 57 of PIC Act

Conditional funding is provided in accordance with these Guidelines (see Part 2.6).

3.4.7.3 Where the worker is a respondent to a stand-alone reconsideration application

The IRO will provide **full funding** to a worker named as a 'respondent' to a stand-alone reconsideration application.

3.4.8 Stage 4 Professional Fees

3.4.8.1 Appeal or Reconsideration in the Commission

The professional fees for appeals and reconsiderations in the Commission are as set out in the **Professional Fees Schedule**.

3.4.8.2 Appeal to a Court

Where the 'appeal' is to a Court the professional fees payable are to be agreed between the IRO and the Lawyer at the conclusion of the matter.

3.4.9 Stage 4 Disbursements

3.4.9.1 Appeal or Reconsideration in the Commission

Pre-approval is required for the incursion of disbursements or expenses for the purpose of an appeal or reconsideration application other than reasonable counsel's fees as set out in Part 5.2 below.

The fees payable for counsel for appeals in the Commission are set out in the **Disbursements Schedule**.

3.4.9.2 Appeal to a Court

Where the appeal is to a Court, expenses may include filing fees, reasonable counsel's fees, appeal books and other reasonably necessary disbursements.

Counsel's fees for appeals to a Court are to be agreed with the IRO prior to the conclusion of the matter.

4. LEGAL COSTS

4.1 Professional Fees

4.1.1 Amounts

The amount of professional fees will be determined on conclusion of the legal relationship or when a final outcome is achieved, whichever is the earlier, and paid at that time.

The professional fees are generally as set out in the **Professional Fees Schedule**.

4.1.2 Goods and Services Tax

The IRO will pay the Goods and Services Tax (GST) on professional fees.

4.1.3 Discretion as to fees

The IRO has an overarching discretion as to the amount of professional fees payable.

Where proceedings are commenced by a Lawyer and it becomes apparent that the case was not properly prepared for it to proceed the IRO may pay professional fees which it considers appropriate in the circumstances.

If a matter resolves whereby the worker does not receive any compensation or does not exceed the threshold sought and the Lawyer has not disclosed all relevant information to the IRO, the IRO may pay professional fees which it considers appropriate in the circumstances. This could mean a reduction in the professional fees sought.

4.1.4 Fees where grants not advanced

4.1.4.1 Lost contact with worker

Where a grant is brought to conclusion because the Lawyer has 'lost contact' with the worker, the professional fees will generally be restricted to 50% of the fees amount set out in the **Professional Fees Schedule**.

4.1.4.2 Where Stage 1 fees previously paid

Where a grant of funding is sought by a Lawyer for a client the subject of an earlier Stage 1 grant to the Lawyer or any other Lawyer, any paid professional fees previously paid by the IRO will generally be deducted from the professional fees payable at the closure of the grant. (refer also to Parts 3.1.4 above).

4.1.4.3 Lack of progress with grant matter

Where a grant matter remains open for a period of twelve (12) months without any progress the grant matter may be closed without payment of professional fees (refer Part 2.14 above).

4.1.5 Discontinued proceedings

Where proceedings have been commenced in the Commission and discontinued, legal costs will be considered depending on the outcome.

4.1.5.1 Discontinued proceedings where no outcome

Where proceedings have been commenced in the Commission and discontinued or struck out in circumstances where there is no resolution of the claim or dispute and there is no intention to recommence the proceedings or pursue the claim or dispute to an outcome, professional fees will be restricted to 50% of the fees amount set out in the **Professional Fees Schedule**.

4.1.5.2 Discontinued proceedings which are recommenced

Where proceedings have been commenced in the Commission and discontinued and proceedings are subsequently recommenced and pursued to outcome, professional fees will be considered and paid at the conclusion of the proceedings and not before.

4.1.6 Complexity increases

Where a Lawyer considers that the professional fees allowed are inadequate the IRO will consider an increase in professional fees on application by the Lawyer.

An increase in professional fees will **only** be considered 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.

A request for an increase should be made at the conclusion of the matter **prior to the preparation of a Tax Invoice**.

The Lawyer should provide reasons in support of the increase sought identifying the complexities and any additional work undertaken.

Any increase in professional fees is at the discretion of the IRO.

4.2 Disbursements

4.2.1 Disbursement funding principles

Disbursements will be funded where it is **reasonably necessary** to conduct investigations, obtain evidence or incur expenses to progress a claim or matter.

The IRO will not reimburse expenses incurred **unnecessarily** or **unreasonably**.

The IRO may not pay an amount considered excessive or unreasonable.

The IRO recognises the limits on the number of **forensic medical reports** admissible in proceedings in relation to a claim or dispute referred to in clauses 43, 44 and 45 of the 2016 Regulation.

If there is any doubt about whether the IRO will meet the cost of a disbursement, the Lawyer should seek confirmation by contacting the ILARS Principal Lawyer before proceeding to incur the expense.

4.2.2 Restrictions and limitations

4.2.2.1 Pre-approval

Generally, pre-approval is not required before a Lawyer incurs disbursements or expenses.

Where pre-approval is required as indicated in these Guidelines and not obtained, the IRO may in its discretion choose not to reimburse or pay the expense.

4.2.2.2 Where pre-approval is required

Pre-approval **is required** for incursion of an expense in the following circumstances:

- Where the fee is not fixed by the State Insurance Regulatory Authority (SIRA) or specified in the **Disbursements Schedule**, or
- Where a second, additional or supplementary report is requested or required for any purpose from a specialist medical practitioner who has not treated the worker ('more than

one medico-legal report'). This includes an additional report to assess another body system, a consolidation report or an updated examination and report. The Lawyer should provide details in support of the need for the report.

- Where a service provider does not comply with the gazetted rates set by SIRA (see Part 4.2.3.1 below).

4.2.2.3 Disbursements in Stage 1

Where funding is approved for Stage 1 only, disbursements are limited to those set out in Part 3.1.5 above.

4.2.3 Disbursement amounts

For certain categories or types of services (described in these Guidelines as disbursement categories or types) SIRA has fixed the maximum fees permitted to be charged for provision of a service in Orders made pursuant to section 339 of the 1998 Act.

4.2.3.1 Disbursements where fees are fixed by Order under section 339, 1998 Act

Where SIRA has fixed the maximum fee for the provision of a service, the IRO will not meet the cost of the disbursement in excess of the maximum fee in relation to the category or type of disbursement (except in exceptional circumstances where pre-approval of a fee over and above the maximum has been obtained from the IRO).

Lawyers are responsible for ensuring that the fee incurred for a category or type of disbursement complies with the gazetted rate.

Where a service provider does not comply with the gazetted rates the IRO expects the Lawyer to raise and resolve the issue with the service provider (see further 5.1.3 below).

If there is a failure to obtain compliance by a service provider with the gazetted rates, the Lawyer should notify the IRO and if possible, choose an alternative service provider.

The IRO will consider requests for approval of a non-compliant fee if attempts to resolve the issue with the service provider have been made and there is no reasonably available alternative provider capable of providing the same service.

4.2.3.2 Disbursements where fees are not fixed by Order under section 339, 1998 Act

Where a maximum fee for the provision of a service is not fixed by SIRA, the IRO will have regard to other reputable published information that relates to reasonable fees charged by the respective profession in New South Wales and may either provide a fee or range of fees based on reasonableness or industry practice.

The details of certain disbursement types are set out in the **Disbursements Schedule**.

Where a fee for a proposed service is significant, the IRO may seek to enjoin the insurer to the payment or otherwise propose that the Lawyer and the insurer engage with a view to agreeing on a single expert or report provider at first instance on a non-binding basis.

4.2.4 Goods and Services Tax

The IRO can not pay the GST on an incurred expense treated as a disbursement in these Guidelines.

4.2.5 Medical Report Providers

The IRO has entered into arrangements with a number of Medical Report Provider organisations (MRPs) which are able to provide Lawyers with access to a wide range of medico-legal experts

and/or trained assessors of permanent impairment. The MRPs are listed on the IRO website.

The MRPs have agreed to submit invoices to the IRO directly for payment thereby removing the need for Lawyers to pay disbursements. The Australian Tax Office has determined that Lawyers must pay the GST incurred for provision of the service directly to the MRP.

Any disputes between a Lawyer and an MRP concerning the fee charged for a service is to be resolved by the Lawyer and the MRP prior to the issue of a Tax Invoice.

Lawyers can choose to use any MRP, or they can contact and retain medico-legal experts (and trained assessors of impairment) directly.

4.3 Payment of legal costs

4.3.1 When to submit a Tax Invoice

Legal costs will be paid upon conclusion of the work, resolution, or final determination of the claim or dispute the subject of the grant of funding.

This includes but is not limited to matters which have been discontinued in the Commission where there is no intention to refile, or where a claim or investigation is unable to proceed as the injured worker has not reached maximum medical improvement or the potential claim is not viable.

The IRO may in its discretion request a Lawyer to submit a Tax Invoice for work done in certain circumstances.

4.3.2 Tax Invoices

Tax Invoices should be compliant with the **ILARS Tax Invoice Guide** and accompanied with the documentation required by the IRO to support the professional fees and disbursements sought.

Disbursements claimed in a Tax Invoice must be itemised separately and must not include GST.

Where possible, all disbursements claimed should be supported by an invoice or receipt.

4.3.3 Interim invoices

Payment of Interim Invoices for legal costs and/or disbursements submitted prior to the conclusion of a funded matter will only be considered in exceptional circumstances, such as where a Lawyer experiences extreme financial hardship or where there have been significant delays in the resolution of a claim or dispute.

4.3.4 When to expect payment

Payment of an approved Tax Invoice will be made by the relevant Government department on behalf of the IRO in accordance with the IRO's terms of business, currently thirty (30) days.

Enquiries about payments will not be addressed until six (6) weeks after the date of an approved Tax Invoice.

5. DISBURSEMENT CATEGORIES

5.1 Medical Evidence

5.1.1 General

The different forms of medical evidence which may be funded include health records (clinical notes), medical reports, medico-legal reports and testing reasonably required by the report provider in order to provide a medico-legal opinion. Some forms of medical evidence are subject to gazetted maximum fees and some are not. Those that are not may be very costly and their need should be evaluated before a Lawyer requests pre-approval for the expense.

5.1.1.1 Report types

Where appropriate, Lawyers should note the distinction between a “file review”, a “medical examination and report” and a “report on the routine management of the workers injury” (to the insurer) and have regard to the definitions and the categories of complexity set out in the relevant Fees Order before incurring a report fee.

The IRO will not pay for reports on the “routine management of the workers injury”. Such reports should be sought by the Lawyer from the insurer directly.

5.1.1.2 Procedures for requesting reports

Lawyers are referred to the procedure for requesting a medical examination and/or report from a medical practitioner under paragraph 7 of the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

The IRO is not able to reimburse a fee for a service that exceeds the maximum fee fixed for the provision of that service except in the circumstances outlined in Part 4.2.3.1 above.

Lawyers should be aware that there is no separate item chargeable under any Fee Order for ‘reading’. Lawyers should be careful to provide to a report provider only information that is necessary for the report provider to consider for the preparation of their report.

Where a medical practitioner refuses to conduct an examination or prepare a report due to the extent of information and documentation provided by the Lawyer, options include condensing or summarising the information into an appropriate form, reducing the volume of information or documentation provided or seeking a report from an alternative practitioner.

5.1.1.3 Expert’s reports

Lawyers should acquaint themselves with PIC Rule 35 and Procedural Direction PIC4 - Expert Witness Evidence (PD PIC4). It is the responsibility of the Lawyer to ensure that medical report providers are made aware of and read PD PIC4 and that any medical expert’s report contains the acknowledgement required under PD PIC4.

Where a medical report requested on or after 1 March 2021 is determined inadmissible by the Commission for non-compliance with PD PIC4, the IRO will generally not meet the cost of a supplementary or further report fee incurred to render the report compliant.

5.1.2 Impairment evaluations

The 4th edition of the NSW workers compensation guidelines for the evaluation of permanent impairment (the PI Guidelines) must be used by trained medical assessors to ensure an objective, fair and consistent method of evaluating the degree of permanent impairment.

The *Principles of Assessment* are stated in Part 2 of the PI Guidelines and include:

“Assessing permanent impairment involves clinical assessment of the claimant as they present on the day of assessment taking account the claimant’s relevant medical history and all available relevant medical information to determine whether the condition has reached Maximum Medical Improvement (MMI)”.

The ‘definition’ of MMI is contained in paragraphs 1.15 and 1.16 of the PI Guidelines which state:

“1.15 Assessments are only to be conducted when the medical assessor considers that the degree of permanent impairment of the claimant is unlikely to improve further and has attained maximum medical improvement. This is considered to occur when the worker’s condition is well stabilised and is unlikely to change substantially in the next year with or without medical treatment.

1.16 If the medical assessor considers that the claimant’s treatment has been inadequate and maximum medical improvement has not been achieved, the assessment should be deferred and comment made on the value of additional or different treatment and/or rehabilitation – subject to paragraph 1.34 in the Guidelines.”

Lawyers should consider the Principles of Assessment and the ‘definition’ of ‘MMI’ **before** arranging for an evaluation of a worker’s impairment.

The list of trained assessors of impairment is accessible on SIRA’s website.

5.1.3 Maximum fees, Fees Orders, service descriptions and levels of complexity

Where SIRA has fixed a maximum fee for a report by a medical practitioner in a Fees Order by reference to a service description or level of complexity, Lawyers should ensure that they specify the appropriate code corresponding with the service description and/or the complexity level of the service required in their correspondence with the service provider.

Where a service description in a Fees Order refers to Guidelines, Lawyers should ensure that any instructions provided to the service provider conform with any requirement in the relevant Guidelines.

Under section 339(3) of the 1998 Act, a Health Service Provider is not entitled to be paid or recover any fee for providing a service that exceeds the maximum fee fixed for the provision of that service. Lawyers must ensure that the contractual arrangement with the service provider does not provide for the payment of a fee above the maximum fees prescribed in the Fees Order.

The IRO is not able to reimburse a fee that exceeds the maximum fee fixed for the provision of that service except in the circumstances outlined in Part 4.2.3.1 above.

5.1.4 Health records (clinical notes)

The fee for the provision of health records (clinical notes) from a treating medical practitioner or treating medical specialist is governed by the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order* relevant to the year of the provision of the service.

The fee for the provision of medical/clinical reports and notes from a public hospital is governed by the *Workers Compensation (Public Hospital Rates) Order* which refers to the *Health Records and Medical/Clinical Reports – Rates Information Bulletin* issued from time to time by NSW Department of Health.

The fee for the provision of health records (clinical notes) from a private hospital is governed by

the *Workers Compensation (Private Hospital Rates) Order* relevant to the year of the provision of the service.

5.1.5 Services from treating general practitioners and treating medical specialists

5.1.5.1 'File review'

A 'File Review' is defined as *"a review of the file when the Practitioner is able to provide a report on the basis of a file review alone"* in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

The fee for a 'File review and report' from a treating general practitioner or treating medical specialist is governed by Schedules 1 and 2 of the Fees Order relevant to the year of the provision of the service.

5.1.5.2 'Medical report'

A medical report where the treating doctor is requested to provide *"an opinion in relation to a dispute or a potential dispute in respect of a claim made by the worker"* is defined as a 'medical examination and report' in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*. The doctor is not required to conduct an examination of the worker.

This is to be distinguished from a 'File Review' and 'Supplementary report' referred to below.

The fee for a 'medical examination and report' is governed by Schedules 1 and 2 of the Fees Order relevant to the year of the provision of the service.

Lawyers should have regard to Part 5.1.3 above before incurring a fee.

5.1.5.3 'Medical examination and report'

A medical report where the doctor is requested to provide *"an opinion in relation to a dispute or a potential dispute in respect of a claim"* is defined as a 'medical examination and report' in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

The fee for a 'medical examination and report' is governed by Schedules 1 and 2 of the Fees Order relevant to the year of the provision of the service.

Lawyers should have regard to Part 5.1.3 above before incurring a fee.

No separate fee for 'reading' will be met by the IRO.

5.1.5.4 'Supplementary report'

A medical report *"where additional information is provided and requested or additional questions are posed"* is defined as a 'supplementary report' in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

The fee for a 'supplementary report' is governed by Schedules 1 and 2 of the Fees Order relevant to the year of the provision of the service.

No separate fee for 'reading' will be met by the IRO.

5.1.5.5 'Update examination and report'

An updated medical examination and report of a worker previously reviewed, where there is no intervening incident is defined as a 'update examination and report' in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

This report category is not appropriate where a further examination and report is required after

the expiry of at least twelve (12) months after the initial report, or where a full examination and report is required based on new medical information or a decision of the insurer.

The fee for an 'update report' is governed by Schedules 1 and 2 of the Fees Order relevant to the year of the provision of the service.

No separate fee for 'reading' will be met by the IRO.

5.1.6 Services from non-treating medical specialists

5.1.6.1 'Medical examination and report'

A medical report where the medical specialist is requested to examine the worker and to provide "*an opinion in relation to a dispute or a potential dispute in respect of a claim*" is defined as a 'medical examination and report' in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

The fee for a 'medical examination and report' is governed by Schedule 2 of the Fees Order relevant to the year of the provision of the service.

Lawyers should have regard to Part 5.1.3 above before incurring a fee.

No separate fee for 'reading' will be met by the IRO.

5.1.6.2 'Supplementary report'

A medical report "*where additional information is provided and requested or additional questions are posed*" is defined as a 'supplementary report' in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

The fee for a 'supplementary report' is governed by Schedule 2 of the Fees Order relevant to the year of the provision of the service.

No separate fee for 'reading' will be met by the IRO.

5.1.6.3 'Update examination and report'

An updated medical examination and report of a worker previously reviewed, where there is no intervening incident is defined as a 'update examination and report' in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

This report category is not appropriate where a further examination and report is required after the expiry of at least twelve (12) months after the initial report, or where a full examination and report is required based on new medical information or a decision of the insurer.

The fee for an 'update report' is governed by Schedules 1 and 2 of the Fees Order relevant to the year of the provision of the service.

No separate fee for 'reading' will be met by the IRO.

5.1.6.4 Medical examination cancellation fees

Cancellation fees may be incurred when a worker is "unreasonably late" for an examination appointment (including a video examination) to the extent that a 'full examination is prevented from being conducted' or the worker fails to attend an examination appointment arranged by a Lawyer (including a video examination).

Cancellation fees are governed by the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

Payment of a cancellation fee (and any associated travel expenses) is at the discretion of the IRO.

The IRO will not meet a cancellation fee incurred by a worker in relation to an examination appointment arranged by a Lawyer unless there is a reasonable explanation for the incursion of the fee.

Where a cancellation fee is incurred by the worker's non-attendance at an examination as a consequence of action or inaction of a Lawyer, cancellation fees will not be paid by the IRO.

Where a cancellation fee is incurred, the IRO will not meet the travel expenses incurred by the medical practitioner.

Where more than one cancellation fee is incurred by a worker's 'unreasonable lateness' or non-attendance, or without reasonable explanation, any fee incurred after the first fee will not be paid by the IRO.

5.1.7 Reading fees and other charges

Any charge sought to be imposed by a provider for the preparation of a report outside of the Fees Order or in excess of the maximum fee permitted for the report will not be met by the IRO. Lawyers are referred to Part 5.1.1.2 above.

5.1.8 Travel expenses for examining non-treating medical specialists

Travel expenses for medico-legal specialists and trained assessors of impairment who are not treating the worker are governed by Schedule 2 of the *Workplace Injury Management and Workers Compensation (Medical Examinations and Report Fees) Order*.

The Fees Order prescribes that travel expenses (and allowances) are to be reimbursed in accordance with the "Use of Private Motor Vehicle" and "Flying Allowance" set out in Items 6 & 14 of Table 1 (Rates and Allowances) to Part B (Monetary Rates) of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* (the Award). The rates for Private Motor Vehicle Allowance and Flying Allowance are reviewed annually and set out in the Treasury Circular publication "Review of Meal, Travelling and Other Allowances".

These allowances do not take into account that medical specialists performing examinations are independent private medical practitioners outside the employ of government who often travel to regional and remote areas and offer services to more than one individual at a time.

The IRO considers that a more equitable and fair allowance is to meet the return kilometrage to the place of examination at the Official Business rate in Item 6 plus the Travel Allowance in Item 2 in the Treasury Circular divided by the number of examinations that the doctor is engaged to perform at the place of travel. A proportional charge will then be paid for each examination where there is an ILARS grant of funding.

The IRO has the discretion to apply an alternative calculation method for travel costs where the proposed method does not reflect the actual travel costs incurred (excluding GST). In such circumstances the Lawyer should discuss the proposed costs with an ILARS Principal Lawyer.

5.1.9 Psychologist reports

The fee for a report from a treating psychologist is governed by the *Workers Compensation (Psychology and Counselling Fees) Order* in so far as the Fees Order specifies fees for report writing *only when* requested by an insurer.

The IRO has adopted the hourly rate set in the *Workers Compensation (Psychology and Counselling Fees) Order* relevant to the year of the provision of the service as appropriate for determining the fee for a report requested from a treating psychologist by a Lawyer. The limitation imposed in the Fee Order on time taken to prepare a report (one hour) is not to be applied.

5.1.10 Categories where fees are not fixed by Order

The IRO recognises there are types of reports in the nature of ‘medical evidence’ where the fees are not fixed by SIRA, for example neuropsychological assessments and reports and functional capacity assessments.

The IRO may from time to time issue guidance material about fees or a range of fees for certain services and set out those fees in the **Disbursements Schedule**.

Where a maximum fee is not fixed by SIRA for a medical report or assessment, and no amount has been indicated in the Disbursements Schedule, the Lawyer should obtain an indicative fee proposed to be charged and should discuss the fee with an ILARS Principal Lawyer and obtain pre-approval prior to arranging an examination.

5.1.11 Medical examinations for workers residing outside Australia

Where a worker resides outside the Commonwealth of Australia and funding is sought to arrange a medico-legal examination of the worker, the Lawyer must notify the insurer of the proposed examination and attempt to obtain agreement from the insurer to conduct a joint medical examination prior to arranging the appointment.

The IRO should be provided with details of such attempts and in the absence of agreement may contact the insurer or their legal representative to facilitate a joint examination prior to providing approval to incur the expense.

5.2 Counsel

5.2.1 Funding principles

Counsel briefed by a Lawyer must be an IRO Approved Barrister (exceptions to the choice of counsel may apply with respect to matters outside the jurisdiction of the Commission).

An experienced Lawyer should not require assistance from counsel on fundamental aspects of the law and practice.

In certain circumstances, the IRO may encourage a Lawyer to seek early assistance from counsel as they develop their acquaintance with the law and practice.

The IRO considers it inappropriate to fund both Lawyers and counsel for the same work.

Where counsel is briefed to undertake work the IRO considers should be within the expertise of the Lawyer, such as conducting a teleconference in the Commission, the IRO may reduce the professional fees payable at the conclusion of the matter.

5.2.2 Scope of funding

The IRO may fund counsel briefed by Lawyers to:

- Give legal advice
- Appear as an advocate and represent a client in a Commission teleconference, conference or hearing
- Negotiate for a client to compromise a case
- Prepare or advise on documents to be used by a client or by others in relation to the client's case
- Advise on prospects of appeal (including submissions to IRO to support a full funding application for an appeal)

- Carry out other work properly incidental to the kinds of work referred to above.

If there is any doubt about whether counsel's fees will be paid, the matter should be discussed with an ILARS Principal Lawyer.

5.2.3 Where no pre-approval of counsel required

The IRO considers it reasonably necessary for counsel to appear at a conference and/or hearing and pre-approval is not required to brief counsel to appear.

5.2.4 Fees for counsel

Fees for counsel are set by the IRO in the **Disbursements Schedule**.

Counsel's fees are recoverable from the IRO as a disbursement when the matter finalises.

The IRO is not able to meet GST on counsel's fees.

5.2.5 Hearings or special fixtures

Where counsel is required by the Commission to be available for a full day hearing or at a special fixture, the IRO will pay a higher fee as set out in the **Disbursements Schedule**.

5.2.6 Complexity increases

The IRO will consider an increase of counsel's fees in exceptional circumstances where a matter has involved significant additional work due to the complexity of the issues or matters not considered in the **Disbursements Schedule**.

To support a request for an increase of counsel's fees, Lawyers should provide a short, signed submission from counsel in support of the requested increase at the conclusion of the matter. Any request for an increase and the supporting submissions should be provided to the ILARS Principal Lawyer for approval *prior to the issuing of a tax invoice*.

5.2.7 Loadings

Country or interstate loadings (including travel and accommodation expenses) are payable in accordance with clause 3 or 4 (as relevant) of Schedule 1 to the *Motor Accidents Compensation Regulation 2020* (or as amended).

The loadings schedule is reproduced in the **Disbursements Schedule**.

5.2.8 Briefing of counsel in matters the subject of *conditional* grants of funding

Where the IRO has approved *conditional funding* to a Lawyer, counsel's fees will only be paid if the conditions of the grant are met. Conditional funding is generally dependent on a *successful outcome* (see Part 2.6 above).

5.2.9 Conditions on payment of counsel's fees for appeals

The Lawyer should make counsel aware of these Guidelines in relation to appeals (Part 3.4 above) and ensure that where *conditional funding* only is approved counsel agrees to conduct work in accordance with these Guidelines.

Where counsel's advice is obtained in support of a request for full funding, the IRO will pay counsel's fees for the advice regardless of whether approval of full funding is provided. This does not apply to appeals from a medical assessment of a Medical Assessor where full funding is not available (see Part 3.4.4.1 above).

5.2.10 Attendance of Lawyers at teleconferences, conferences and hearings

The IRO expects instructing solicitors to be present at teleconferences, conferences and hearings when counsel have been briefed.

The IRO may require Lawyers to certify that an instructing solicitor was present when payment of counsel's fees is sought as a disbursement at the conclusion of a matter.

5.3 Travel and associated expenses

5.3.1 General

Travel and associated expenses *for a worker* includes the cost of travel, accommodation, meals or sustenance and ancillary travel related expenses in the circumstances set out in these Guidelines.

5.3.2 When travel is covered by the IRO

Travel and associated expenses will be paid by the IRO when a worker is required to attend any of the following:

- An examination by a health service provider arranged by the worker's Lawyer (where the examination is approved under a grant of funding by the IRO)
- A conference and hearing in the Commission
- A Court hearing associated with an appeal from a decision of the Commission

5.3.3 When travel is not covered by the IRO

Travel and associated expenses will not be paid by the IRO when a worker is required to attend:

- A medical appointment with a treating health service provider solely for the purpose of treatment or medical treatment investigation, or
- An IME/medico-legal appointment arranged by the employer or insurer, or
- An appointment with a Medical Assessor or Appeal Panel appointed by the President.

Travel and associated expenses to attend a routine medical appointment with a treating health service provider are *payable by the insurer* under section 60(2) of the 1987 Act.

Travel and associated expenses to attend an insurer or employer arranged IME/medico-legal appointment are *payable by the insurer or employer* under section 125 of the 1998 Act.

Travel and associated expenses to attend Medical Assessor or Appeal Panel appointments are *payable by the insurer* under section 330 of the 1998 Act.

5.3.4 Means of travel

Travel by the most convenient and reasonably accessible method available to the worker will be covered and includes public transport, private vehicle, taxi, ride sharing service and air.

Travel by private vehicle is allowed at a rate per kilometre and includes all expenses associated with the use of the motor vehicle including but not limited to petrol, parking and road tolls.

Air travel should be arranged based on the average *economy* fare for the day on a reliable carrier. Where urgent air travel cannot be avoided, or in the event of a cancellation or an event outside the control of the passenger or the Lawyer, then the best available fare at the time will be met.

5.3.5 Associated expenses

Travel associated expenses include accommodation, meals or sustenance and ancillary related expenses.

Accommodation costs will be met where overnight stay is required or is reasonably necessary at reasonable rates.

An allowance per main meal up to a maximum daily allowance per person will be paid upon production of receipts where total travel time per trip is in excess of four (4) hours or overnight stay is required.

Total travel time includes time taken to attend the 'appointment' or hearing.

5.3.6 Travel and associated expenses for carers or partners

Where a carer or partner is required to accompany a worker a short supporting letter or certificate from the worker's nominated treating doctor in support of the attendance will be required prior to payment of any claimed travel and associated expenses for the carer or partner.

5.3.7 Cancellation fees

Where travel services are cancelled by the carrier, reasonable attempts to receive a full refund should be made by the Lawyer prior to submitting a Tax Invoice.

5.3.8 Interim payment of travel expenses

Where a worker has expended their own money for **travel by air** and associated expenses the IRO may pay the expenses upon the provision of an Interim Tax Invoice by the Lawyer accompanied by available accounts and receipts.

5.3.9 Rates and allowances guidance

The rates and allowances for travel and associated expenses are set out in the **Disbursements Schedule. Accounts and receipts** must be provided to substantiate all purchased services.

The IRO can not meet GST on travel and associated expenses.

5.4 Interpreters

Lawyers should note a worker's requirement for an interpreter and the relevant language on the Grant Application Form.

Lawyers should be aware that the President arranges for interpreter services where indicated on an Application for all teleconference and face to face proceedings.

Interpreters should be certified, where possible, by the National Authority for the Accreditation of Translators and Interpreters (NAATI) to the level of 'Certified Specialist Interpreter – Health or Legal'.

The IRO will pay interpreters fees in accordance with the Schedule of Service Charges for Commercial Clients issued by the Australian Government's Translating and Interpreting Service (TIS National) and amended and adapted with permission by the IRO to exclude GST.

The IRO Interpreter's fees Schedule is published on the IRO website.

5.5 Travel expenses for Lawyers (Loadings)

Country or interstate loadings (including travel and accommodation expenses) are payable in accordance with clause 3 or 4 (as relevant) of Schedule 1 to the *Motor Accidents Compensation Regulation 2015*. The loadings schedule is reproduced in the **Disbursements Schedule**.

Country or interstate loadings are treated as a disbursement by the IRO. The IRO can not pay GST on loadings.

5.6 Conduct money/Production fees

An amount paid as 'conduct money' to a producer to comply with a Direction for Production in the Commission is recoverable as a disbursement exclusive of GST.

5.7 Agent's fees

Reasonable agent's fees for inspecting and copying documents produced under a Direction for Production to the Commission are recoverable as a disbursement upon provision of a tax invoice from the agent exclusive of GST.

5.8 Witness expenses

Where witness expenses are incurred in proceedings before the Commission, reasonable expenses are recoverable as a disbursement exclusive of GST.

5.9 Documents from government agencies or departments

Charges for documents produced pursuant to an application under the *Government Information (Public Access) Act 2009* (GIPA Act) are prescribed in the GIPA Act and will be paid as a disbursement exclusive of GST.

Charges for documents requested from the Coroner are prescribed by the Coroners Court and referenced on the application form for documents.

Charges prescribed by the Registry of Births Deaths & Marriages are prescribed by the Registry and referred to on the application form.

Charges for police incident or event reports are prescribed by the NSW Police and referenced on the incident report application form.

5.10 Other expenses where fees are not fixed

Where a fee is not fixed, the IRO may fix the fee payable or issue fee guidance in respect of a particular category or type of incurred expense and publish that guidance in the **Disbursements Schedule**.

Pre-approval is required before the Lawyer incurs an expense where the fee is not fixed and a fee has not been set by the IRO.

If a Lawyer is in doubt as to whether an expense will be reimbursed or paid by the IRO, the Lawyer should first check the **Disbursements Schedule** or discuss the matter with the ILARS Principal Lawyer prior to incurring the expense.

6. GRANT AMOUNTS

6.1 Application of Grant Amounts

This Part contains the **Professional Fees Schedule** and **Disbursements Schedule** referred to in these Guidelines.

These Guidelines prescribe in certain circumstances that the professional fees may be reduced or otherwise altered in certain circumstances.

Professional fees paid for Appeals and Reconsiderations are in addition to fees paid for the substantive proceedings where the work is conducted in a single grant.

6.2 Application of this Part

The Grant Amounts set out below apply for all resolutions on or after **1 March 2021**.

The IRO reserves the right to amend, vary or alter this Part from time to time.

6.3 Professional Fees Schedule

PROFESSIONAL FEES		
Event	Stage 1 Resolutions	
1.1	Comprehensive legal advice including: • completing a worker's injury claim form [SIRA08684] and advising as to the consequent decision of the insurer in relation to the claim made, or • resolving a claims management issue and advising as to the resultant decision of the insurer	\$800
1.2	'Independent legal advice' in respect of a Complying Agreement proposed by an insurer under s66A 1987 Act	\$1,100
	Stage 2 Resolutions	
2.1	Where a claim for hearing aids only is made and as a result the insurer provides hearing aids	\$800
2.2	Dispute about decision of insurer as described in s78(1)(a) or (b) 1998 Act resolved after simple request for review by insurer	\$1,200
2.3	Where investigations conducted (including the obtaining of medical evidence) and a claim or dispute is not pursued (or no outcome reached and matter not proceeding)	\$1,800
2.4	Dispute about decision of insurer as described in s78(1)(a) or (b) 1998 Act resolved after investigations conducted (including the obtaining of medical evidence) and following request for review by insurer	\$2,400

2.5	Where investigations conducted (including the obtaining of medical evidence) and a claim (excluding a claim for lump sum compensation) is made and accepted by insurer <i>(excludes the making of claim by completion of a worker's injury claim form [SIRA08684])</i>	\$2,400
2.6	Where worker disputes a work capacity decision involving PIAWE only resolved between worker and insurer (on internal review or with IRO intervention) [refer s287A(1)(a) 1998 Act]	\$2,400
2.7	Where worker disputes a work capacity decision (other than where PIAWE only is in issue) resolved between worker and insurer (on internal review or with IRO intervention) [refer s287A(1)(a) 1998 Act]	\$3,000
2.8	Threshold impairment dispute (s59A, s32A, s39, s60AA 1987 Act) [except s151H work injury damages threshold] notified to the insurer based on evidence and accepted by insurer	\$3,000
2.9	Where lump sum compensation claim (s66 and/or 67 1987 Act) resolved by Complying Agreement [Including industrial deafness lump sum compensation and hearing aids]	\$3,200
2.10	Where lump sum compensation claim (s66 and/or 67 1987 Act) resolved by Complying Agreement (as separate resolution) and any other claim or dispute notified to the insurer and resolved between worker and insurer including on internal review or with IRO intervention	\$4,000
Stage 3 Resolutions		
Expedited assessment		
3.1	Work Capacity Decision - PIAWE only dispute resolved by Interim Payment Direction	\$3,500
3.2	Other matters resolved through the Expedited Assessments pathway by Direction or Recommendation at or after teleconference	\$4,500
Medical assessment		
3.3	Matters resolved by Medical Assessment Certificate (including threshold impairment disputes (except under s151H of the 1987 Act))	\$5,000

	Hearings		
3.4	Matters resolved in Commission from registration up to and including initial teleconference	\$6,500	
3.5	Matters resolved in Commission after initial teleconference and before date of initial conference	\$7,200	
3.6	Matters resolved on date of initial conference and before hearing commences	\$7,500	
3.7	Matters resolved after hearing commences	\$7,800	
	Other Resolutions		
3.8	Commutations including registration of agreement	\$3,500	
	Stage 4 Appeals and Reconsiderations in the Commission		
4.1	Appeal against decision of a Non-Presidential Member	Where no counsel briefed \$3,000	Where counsel briefed \$2,000
4.2	Referral of question of law to the President	Where no counsel briefed \$3,000	Where counsel briefed \$2,000
4.3	Appeal against a Medical Assessment Certificate	Where no counsel briefed \$2,500	Where counsel briefed \$1,500
4.4	Reconsideration	\$1,000 (no additional Counsel fees paid)	

6.4 Disbursements Schedule

DISBURSEMENTS		
Counsel's fees		
Early advice from counsel		\$500
Appearance at teleconference		\$1,000
Conference and/or Hearing single allocation		\$1,600
Second counsel where original counsel not available on second or subsequent day of hearing		\$1,600
Full day hearing fee in Commission		\$3,000
Subsequent hearing allocation per hearing after first day		\$1,500
Preparation of grounds and submissions on referral of a Question of Law to the President		\$2,000
Written submissions ordered by a Presidential or Non-Presidential Member		\$1,500
Advice or written submissions on arguable case for appeal and important question of law to support full funding		\$500
Grounds of appeal and submissions on appeal from a Non-Presidential Member's decision		\$2,000
Hearing before Presidential Member		\$2,000
Grounds of appeal and submissions on appeal from a Medical Assessment Certificate		\$1,000
Travel and Allowances		
Type	Conditions	Maximum Rate/Fee
Public transport	Where appropriate form of transport	As charged
Taxi or other metered fare	Reasonable	As charged

Air	Economy or best available in certain circumstances	As charged
Private motor vehicle	Km rate only – no parking fee/tolls unless km rate not charged	0.65c per km Round trip
Accommodation	Where overnight stay is required - reasonable 3 star	Up to \$200 per night per room exclusive of GST (as a guide depending on location and availability)
Sustenance	Only where total travel time per trip is in excess of four (4) hours or overnight stay is required Total travel time includes time taken to attend the 'appointment' or hearing	Up to \$35 per main meal Up to \$70 per day per person in total
Sundry or other expenses		
Functional Capacity Assessment and report (also known as Functional Capacity Evaluation Reports) (where examination of worker takes place)		As per <i>Workplace Injury Management and Workers Compensation (Medical Examinations and Reports Fees) Order</i> Complex report
Suitable Employment Assessment and report (also called Vocational Assessment Report) (where examination of worker takes place)		As per <i>Workplace Injury Management and Workers Compensation (Medical Examinations and Reports Fees) Order</i> Complex report
Suitable Employment Assessment and report (also called Vocational Assessment Report) (where no examination of worker takes place)		As per <i>Workplace Injury Management and Workers Compensation (Medical Examinations and Reports Fees) Order</i> Standard report

Loadings

Refer to *Motor Accidents Compensation Regulation 2020* Schedule 1 Maximum costs for legal services

3 Country loadings

- (1) An advocate whose principal chambers or offices are in the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in a town outside that area, to a loading for that town in accordance with the Table to this clause.
- (2) If proceedings take place at 2 or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
- (3) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in the Sydney Metropolitan area, to a loading for that town in accordance with the Table to this clause.
- (4) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard at another town outside the Sydney Metropolitan area, to a loading for that other town in accordance with the Table to this clause.
- (5) If proceedings take place at 2 or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
- (6) For the purposes of this clause, if a town is not included in the Table to this clause, the loading for that town is to be the loading for the nearest town that is so included.
- (7) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a loading is applicable under this clause, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.

Table

Town	Maximum loading \$	Town	Maximum loading \$
Albury	1,042	Katoomba	345
Armidale	956	Kempsey	906
Batemans Bay	954	Lismore	948
Bathurst	756	Lithgow	393
Bega	1,150	Maitland and East Maitland	592
Bourke	1,643	Moree	887
Broken Hill	1,774	Moruya	721
Byron Bay	948	Moss Vale	409

Campbelltown	91	Mudgee	705
Canberra and ACT	757	Murwillumbah	1,096
Casino	1,074	Muswellbrook	627
Cessnock	592	Narrabri	823
Cobar	1,511	Narrandera	818
Coffs Harbour	841	Newcastle	592
Condobolin	1,281	Nowra	592
Cooma	1,270	Nyngan	1,407
Coonamble	1,225	Orange	674
Cootamundra	868	Parkes	912
Cowra	669	Penrith	91
Deniliquin	1,119	Port Macquarie	764
Dubbo	886	Queanbeyan	757
Forbes	886	Singleton	910
Glen Innes	841	Tamworth	882
Gosford	254	Taree	705
Goulburn	625	Tweed Heads	1,028
Grafton	1,030	Wagga Wagga	783
Griffith	847	Wentworth	1,662
Gundagai	994	Wollongong	375
Gunnedah	980	Yass	666
Hay	1,096	Young	868
Inverell	984		

4 Interstate loadings

- (1) An advocate whose principal chambers or offices are in New South Wales is entitled, in respect of proceedings heard or partially heard in another State or Territory, to such reasonable loading as is determined by the court or the claims assessor.
- (2) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a court or assessor determines that a loading is applicable under this clause, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.



Disclaimer

These Guidelines contain information about the workers compensation system in NSW including legislation and regulation. They refer to obligations under other legislation administered by the New South Wales Government.

To ensure you comply with your legal obligations you must refer to the appropriate legislation. Current legislation is available on the NSW legislation website <http://www.legislation.nsw.gov.au>

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice.

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Version control

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