



Workers Compensation
independent review office

WIRO Funding Policy for the Independent Legal Assistance and Review Service

This version of the WIRO Funding Policy is published
as of 2 September 2019 and will be updated periodically.

To confirm if this is the current version consult the WIRO
website www.wiro.nsw.gov.au

Contents

INTRODUCTION	5
1. BACKGROUND AND GENERAL PRINCIPLES	6
1.1 System objectives	6
1.2 Independent Legal Assistance and Review Service (ILARS)	6
1.2.1 Functions	6
1.2.2 ILARS Information Purpose and Use	7
1.3 Scope Purpose of funding	7
1.4 Approved Lawyers	7
1.5 Eligible workers	8
1.6 Early dispute resolution	8
1.7 Communication with WIRO	8
1.8 Related guides and documents	8
2. GRANTS OF FUNDING	10
2.1 General	10
2.1.1 Requirement for grant	10
2.1.2 Definition of legal costs	10
2.2 How a grant is sought	10
2.3 Grant assessment process	10
2.4 Applications requiring urgent or immediate funding	10
2.5 Approval of funding	11
2.6 Conditional funding	11
2.7 Representation where claim for death benefits	11
2.8 Multiple funding applications for the same eligible injured worker	11
2.9 Where instructions are withdrawn and provided to a new Lawyer	12
2.9.1 New Grant Application Form required	12
2.9.2 Arrangement as to legal costs	12
2.9.3 Exchange of files	12
2.10 When a grant of funding is unavailable	12
2.11 Applications for a grant of funding made after an event	12

2.12	Review of funding decisions	12
2.13	Refunds of payments made	13
2.14	Grant Amounts	13
2.15	Staged Funding	13
3.	FUNDING STAGES	14
3.1	Stage 1 - Preliminary legal advice	14
3.1.1	Purpose	14
3.1.2	Where Stage 1 funding unavailable	14
3.1.3	Stage 1 Professional Fees	14
3.1.4	Stage 1 Disbursements	14
3.2	Stage 2 - Investigations and claims	14
3.2.1	Purpose	14
3.2.2	When extension of funding required	15
3.2.3	Requirements for extension of funding	15
3.2.4	Stage 2 Professional Fees	15
3.2.5	Stage 2 Disbursements	15
3.3	Stage 3 - Proceedings in the WCC	15
3.3.1	Purpose	15
3.3.2	Where funding will be granted	15
3.3.3	Where amount in dispute is less than \$3,000	16
3.3.4	Timeframes for referrals of disputes to the WCC	16
3.3.5	Provision of information to WIRO	16
3.3.6	Stage 3 Professional Fees	17
3.3.7	Stage 3 Disbursements	17
3.4	Stage 4 – Appeals and Reconsiderations	17
3.4.1	Timeframes for appeals	17
3.4.2	Categories of appeal	17
3.4.3	Extension of funding required	17
3.4.4	Funding available for Appeals	18
3.4.5	Where Appeal is to a Court	18

3.4.6 Notification to WIRO of any appeal	19
3.4.7 Reconsiderations	19
3.4.8 Stage 4 Professional Fees	19
3.4.9 Stage 4 Disbursements	20
4. LEGAL COSTS	21
4.1 Professional Fees	21
4.1.1 Amounts	21
4.1.2 Goods and Services Tax	21
4.1.3 Discretion as to fees	21
4.1.4 Complexity increases	21
4.1.5 Discontinued proceedings	21
4.2 Disbursements	22
4.2.1 Disbursement funding principles	22
4.2.2 Restrictions and limitations	22
4.2.3 Fees for disbursements	23
4.2.4 Goods and Services Tax	23
4.2.5 Medical Report Providers	23
4.3 Payment of legal costs	24
4.3.1 When to submit a Tax Invoice	24
4.3.2 Tax Invoices	24
4.3.3 Interim invoices	24
4.3.4 When to expect payment	24
5. DISBURSEMENT CATEGORIES	25
5.1 Medical Evidence	25
5.1.1 General	25
5.1.2 Impairment evaluations	25
5.1.3 Maximum fees, Fees Orders, service descriptions and levels of complexity	25
5.1.4 Health records (clinical notes)	26
5.1.5 Services from treating general practitioners and treating medical specialists	26
5.1.6 Services from non-treating medical specialists	27

5.1.7	Travel expenses for examining non-treating medical specialists	28
5.1.8	Psychologist reports	28
5.1.9	Categories where fees are not fixed by SIRA	29
5.2	Counsel	29
5.2.1	Funding principles	29
5.2.2	Scope of funding	29
5.2.3	Fees for counsel	30
5.2.4	Arbitration hearings or special fixtures	30
5.2.5	Complexity increases	30
5.2.6	Loadings	30
5.2.7	Briefing of counsel in matters the subject of <i>conditional</i> grants of funding	30
5.2.8	Conditions on payment of counsel's fees for appeals	30
5.2.9	Attendance of Lawyers at teleconferences and conciliation/arbitration hearings	30
5.3	Travel and associated expenses	31
5.3.1	General	31
5.3.2	When travel is covered by WIRO	31
5.3.3	When travel is not covered by WIRO	31
5.3.4	Means of travel	31
5.3.5	Associated expenses	31
5.3.6	Travel and associated expenses for carers or partners	32
5.3.7	Cancellation fees	32
5.3.8	Interim payment of travel expenses	32
5.3.9	Rates and allowances guidance	32
5.4	Interpreters	32
5.5	Travel expenses for Lawyers (loadings)	32
5.6	Conduct money/Production fees	33
5.7	Agent's fees	33
5.8	Witness expenses	33
5.9	Documents from government agencies or departments	33
5.10	Other expenses where fees are not fixed	33

INTRODUCTION

This Policy sets out the principles by which the WIRO Independent Legal Assistance and Review Service (ILARS) will grant funding to enable Approved Lawyers to represent injured workers in relation to their rights and entitlements to seek compensation under the New South Wales workers compensation legislation.

WIRO recognises that the current workers compensation scheme is complex and injured workers require access to assistance and legal representation from lawyers in order to understand and pursue their rights and entitlements.

WIRO supports early cost-effective resolution of disagreements and disputes to direct the focus of workers, insurers and employers on the restoration of a worker's health and return to meaningful work.

This Policy applies to all Australian legal practitioners approved by WIRO to provide legal services to injured workers in the NSW workers compensation scheme.

This Policy is to be used as a Guide and its application is flexible to enable WIRO to respond to differing circumstances. Lawyers are welcome to contact WIRO to discuss why departure from the terms of this Policy should be considered in particular circumstances.

1. BACKGROUND AND GENERAL PRINCIPLES

Grants of funding are provided to enable eligible injured 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 this Policy 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, 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 Independent Legal Assistance and Review Service (ILARS)

1.2.1 Functions

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 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 is managed by the Workers Compensation Independent Review Office (WIRO) and provides for the paid engagement of independent solicitors and barristers with experience in workers compensation.

ILARS is responsible for ensuring that eligible workers are able to access independent legal

advice and assistance at no cost to them.

Funding is paid out of the Workers Compensation Operational Fund.

1.2.2 ILARS Information | Purpose and Use

Section 27(c) of the 1998 Act provides WIRO with a broad oversight function to inquire into and report to the Minister on such matters arising in connection with the operation of the Workers Compensation Acts considered appropriate.

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

1.3 Scope | Purpose of funding

The purpose of ILARS funding is to ensure that **eligible injured 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 Workers Compensation Commission (WCC) 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 WCC and to higher Courts where appropriate

There is a general presumption in favour of funding.

In the case of the death of an eligible injured worker, funding contemplated by this Policy 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, both solicitors and barristers, 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 Approved Lawyer in the NSW workers compensation scheme](#) and the [Practice Standards for WIRO Approved Lawyers](#).

Approved Lawyers will be referred to as Lawyers in this Policy.

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.

They 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

WIRO is committed to achieving ‘just, quick and cheap resolution’ of the issues in the claims and disputes of injured workers.

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

WIRO may intervene in a matter the subject of a grant of funding where an opportunity arises for an early outcome to be achieved.

1.7 Communication with WIRO

The operation of this Policy is predicated upon co-operation between the Lawyer and WIRO.

WIRO has developed **Practice Standards for WIRO Approved Lawyers** which form part of this Policy.

The success of this Policy is reliant on Lawyers and WIRO 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

WIRO may from time to time seek a progress report with respect to a grant of funding. Where an update is not provided within twenty-eight (28) days of a request, WIRO reserves the right to withdraw funding and close the grant.

1.8 Related guides and documents

A range of additional guides and documents are relevant to the ILARS Policy. 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	August 2019	WIRO
ILARS Grant Amount Guide	August 2019	WIRO

ILARS Tax Invoice Guide	August 2019	WIRO
Application and Agreement to be a WIRO Approved Lawyer (Solicitor)	August 2019	WIRO
Practice Standards for WIRO Approved Lawyers (Solicitors)	August 2019	WIRO
Approval requirements for WIRO Approved Lawyers (Solicitors)	August 2019	WIRO
Guides to the Evaluation of Permanent Impairment 5 th Edition	November 2000	American Medical Association
NSW workers compensation guidelines for the evaluation of permanent impairment (4 th edition)	1 April 2016	SIRA
Gazetted Fees Orders	As made	SIRA

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** at the conclusion of work done for or on behalf of an eligible injured worker.

2.1.2 Definition of legal costs

In this Policy “**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**’).

2.2 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@wiro.nsw.gov.au.

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

2.3 Grant assessment process

Within one (1) working day of receipt of an Application Form into WIRO’s central email inbox, the application will be entered into WIRO’s database and allocated to an ILARS team member for assessment.

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

Grants will be approved or declined within five (5) working days of the receipt of the Application Form.

Where there is no or insufficient information to support a grant approval WIRO may request further information to ground the approval of a grant. If further information is required, assessment of the application will be finalised within five (5) working days of the provision of the information requested.

2.4 Applications requiring urgent or immediate funding

Where circumstances necessitate an urgent or immediate assessment of a funding application the Lawyer should contact WIRO ILARS by calling **13 9476**.

2.5 Approval of funding

The terms of a grant of funding will be communicated to the Lawyer in WIRO's Approval Letter. Funding approval is at the discretion of WIRO and is provided on a case by case basis.

2.6 Conditional funding

'Conditional funding' will be available in certain circumstances outlined in the Policy.

Where funding is approved on a conditional basis, 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.

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

For the purpose of this Policy, a **successful outcome** is one where the worker achieves a benefit from the conditionally funded matter or action. A benefit might be the 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.

WIRO requires that separate representation be provided by a Lawyer in a separate law practice.

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

2.8 Multiple funding applications for the same eligible injured worker

Where there is an open grant of funding made to a Lawyer for an injured 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 canvas 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 advice with respect to both the specific issue (or issues) for which the grant has been made and the injured worker's rights to workers compensation benefits (and attendant obligations) generally. Additional grants of funding to provide advice may only be made where new issues or disputes arise.

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

This does not affect WIRO'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 and the worker subsequently instructs *another law practice* (whether or not as a consequence of the Lawyer changing law practices) in relation to the same 'grant matter' before that matter has resolved or concluded, the new law practice must provide a new Application Form for the worker before proceeding to undertake any work.

2.9.2 Arrangement as to legal costs

The legal costs payable under the existing grant will be determined by WIRO and paid directly to the existing Lawyer upon provision of a Tax Invoice.

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

The legal costs ultimately paid under each grant may be up to the maximum permissible under this Policy.

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 upon receipt of the appropriate authority and 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 hearing aids where the worker is retired and of pension age and eligible for hearing aids under the Australian Government Department of Health Hearing Services Program
- 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 WCC or proceeded to appeal in the WCC or Court *without* a grant of funding, WIRO has no authority to approve or pay costs.

2.12 Review of funding decisions

A request for review of a funding decision may be sought at any time and should be made by email to the original funding decision maker with supporting information as is considered appropriate.

A review of a funding decision will be conducted by an ILARS Manager at first instance and a response to a request for a review will be provided within five (5) working days of the receipt of the request.

If the Lawyer is dissatisfied with the review decision a request for a further final review can be made to the Director ILARS. The final review decision will be advised within five (5) working days of receipt of the request for further review.

2.13 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, WIRO may seek a refund of legal costs or any part of the costs paid under the grant.

2.14 Grant Amounts

Once a grant of funding is approved WIRO will meet the legal costs of the worker subject to the terms of this Policy and in accordance with the [ILARS Grant Amount Guide](#).

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

2.15 Staged Funding

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

WIRO 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.

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

3.1 Stage 1 - Preliminary legal advice

3.1.1 Purpose

Funding is available for Lawyers to provide **preliminary legal advice** to an eligible injured worker about their rights and entitlements under the workers compensation legislation.

This funding enables Lawyers to:

- Confer with an eligible injured worker
- Conduct early enquiries (including obtaining information from the insurer, if relevant),
- Commence investigations of any potential claim (including completing a worker's injury claim form on behalf of an injured worker)
- Assess the prospects of disputing an insurer's decision
- Provide the worker with preliminary advice.

3.1.2 Where Stage 1 funding unavailable

Stage 1 preliminary advice funding is not available for industrial deafness claims.

3.1.3 Stage 1 Professional Fees

Where after provision of preliminary legal advice no further action is contemplated or proposed to be taken by the Lawyer, the grant of funding may be finalised.

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

3.1.4 Stage 1 Disbursements

For the purpose of providing preliminary legal advice 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.

3.2 Stage 2 - Investigations and claims

3.2.1 Purpose

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

- A claim for benefits
- A dispute about a 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 WCC (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 has been approved, an extension of funding to Stage 2 **is** required.

3.2.3 Requirements for extension of funding

WIRO may not extend funding to Stage 2 unless the Lawyer provides an explanation or short reasons in support of the request.

WIRO will not extend funding for matters which are without merit.

3.2.4 Stage 2 Professional Fees

Stage 2 contemplates further work including the engagement 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 WCC, professional fees are as set out in the **Professional Fees Schedule** in the [ILARS Grant Amount Guide](#).

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 WIRO will meet the cost of a disbursement, the Lawyer should seek confirmation by contacting an ILARS Manager or ILARS Principal Lawyer before proceeding to incur the fee.

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

3.3 Stage 3 - Proceedings in the WCC

3.3.1 Purpose

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

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.

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 if there is a grant of funding to which is attached relevant information in support of funding (if not already provided).

3.3.3 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 WCC 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 worker has the dispute determined.

3.3.4 Timeframes for referrals of disputes to the WCC

Except in limited circumstances, section 289 of the 1998 Act provides that a dispute cannot be referred for determination by the WCC 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 month has elapsed as required by the Act.

The WCC 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.

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, WIRO 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 WIRO engages with the insurer any response from the insurer (generally received within five (5) working days) will be provided to the Lawyer.

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 WCC will be provided at the expiry of the relevant legislated timeframe plus the postal rule period.

3.3.5 Provision of information to WIRO

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

- A copy of the Application lodged (Form 1, Form 2, etc) [without attachments]
- A copy of the WCC 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 conciliation/arbitration hearing
- The name of the counsel briefed
- A copy of Directions issued by the WCC [if considered appropriate by the Lawyer]

- A copy of Orders, Certificates or outcome documents including Certificates of Determination, Statement of Reasons, Consent Orders, Elections to Discontinue, Medical Assessment Certificates, Medical Appeal Panel Certificates and the like.

Information should be provided to WIRO as soon as it is available.

3.3.6 Stage 3 Professional Fees

Professional fees are as set out in the **Professional Fees Schedule** in the [ILARS Grant Amount Guide](#).

3.3.7 Stage 3 Disbursements

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

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

Lawyers are referred to Part 4.2 of this Policy for disbursement funding principles and restrictions and Part 5 of this Policy 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.

WIRO recognises that time is of the essence for the approval of funding.

WIRO will consider an extension of funding for an appeal in the categories set out in this Policy on terms as set out below.

3.4.2 Categories of appeal

The categories of appeal considered in this Policy are:

- Appeal against a direction or decision of the Registrar (to Supreme Court)
- Appeal against a decision of the WCC constituted by an Arbitrator
- Appeal against a medical assessment of an Approved Medical Specialist certified in a Medical Assessment Certificate
- Appeal against a decision of a Medical Appeal Panel (to Supreme Court)
- Appeal against a decision of the WCC 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

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

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

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

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

Generally, **conditional funding** will be provided where the worker is the proposed appellant. Conditional funding is provided in accordance with Part 2.6 of this Policy.

Full funding (unconditional funding) will be considered by the Director ILARS or the Independent Review Officer 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, or why the matter involves an important question of law.

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

Full funding is not available for appeals from a medical assessment of an Approved Medical Specialist certified in a Medical Assessment Certificate.

3.4.4.2 Where the worker is the respondent

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

Lawyers should notify WIRO 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** is unconditional funding and 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, WIRO expects that efforts will be made by the Lawyer to secure this arrangement.

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 WIRO for approval and payment.

WIRO 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

WIRO 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 WIRO can consider and approve the proposed rates prior to conclusion of the proceedings.

3.4.6 Notification to WIRO of any appeal

WIRO will only consider payment of costs for an appeal where WIRO is notified prior to or at the time of the appeal being lodged or responded to. WIRO will not extend funding if first notice of the appeal is 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 WCC, 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

WIRO will **conditionally fund** the following reconsideration applications:

- Referral for further medical assessment by Medical Assessor: Section 329 of the 1998 Act
- Reconsideration by WCC (Presidential Member, Arbitrator or Registrar): Section 350 of the 1998 Act
- Reconsideration of Decision by Registrar or Appeal Panel: Section 378 of the 1998 Act

Conditional funding is provided in accordance with this Policy (see Part 2.6).

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

WIRO 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 WCC

The professional fees for appeals and reconsiderations in the WCC are as set out in the **Professional Fees Schedule** in the [ILARS Grant Amount Guide](#).

3.4.8.2 Appeal to a Court

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

3.4.9 Stage 4 Disbursements

3.4.9.1 Appeal or Reconsideration in the WCC

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 WCC are set out in the **Disbursements Schedule** in the [ILARS Grant Amount Guide](#).

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 WIRO 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** in the [ILARS Grant Amount Guide](#).

4.1.2 Goods and Services Tax

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

4.1.3 Discretion as to fees

WIRO 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 WIRO 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 WIRO, WIRO may pay professional fees which it considers appropriate in the circumstances. This could mean a reduction in the professional fees sought.

4.1.4 Complexity increases

Where a Lawyer considers that the professional fees allowed are inadequate WIRO 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 WIRO.

4.1.5 Discontinued proceedings

Where proceedings have been commenced in the WCC 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 WCC and discontinued 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** in the [ILARS Grant Amount Guide](#).

4.1.5.2 Discontinued proceedings which are recommenced

Where proceedings have been commenced in the WCC 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.

4.2 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.

WIRO will not reimburse expenses incurred **unnecessarily** or **unreasonably**.

WIRO may not pay an amount considered excessive or unreasonable.

WIRO 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 WIRO will meet the cost of a disbursement, the Lawyer should seek confirmation by contacting an ILARS Manager or 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 this Policy and not obtained, WIRO 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 ILARS Grant Amount Guide, 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')
- 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 Preliminary Advice

Where funding is approved to provide preliminary advice only, disbursements are limited to those set out in Part 3.1.4 above.

4.2.3 Fees for disbursements

For certain categories or types of services (described in this Policy as disbursement categories or types) SIRA has fixed the maximum fees permitted to be charged for provision of a service in a gazetted Fees Order or elsewhere.

4.2.3.1 Disbursements where fees are fixed by SIRA

Where SIRA has fixed the maximum fee for the provision of a service, WIRO 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 WIRO).

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 WIRO 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 WIRO and if possible, choose an alternative service provider.

WIRO 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 SIRA

Where a maximum fee for the provision of a service is not fixed by SIRA, WIRO 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** in the [ILARS Grant Amount Guide](#).

Where a fee for a proposed service is significant, WIRO 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

WIRO can not pay the GST on an incurred expense treated as a disbursement in this Policy.

4.2.5 Medical Report Providers

WIRO has entered into arrangements with a number of Medical Report Provider organisations who are able to provide Lawyers with access to a wide range of medico-legal experts and/or trained assessors of permanent impairment. The Medical Report Provider organisations are listed on the WIRO website.

The Medical Report Provider organisations have agreed to submit invoices to WIRO 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 to the Medical Report Provider organisation.

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

Lawyers can choose to use any Medical Report Provider, or they can continue to contact 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 WCC 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.

WIRO 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 WIRO 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 WIRO in accordance with WIRO'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.

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.

WIRO 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.

5.1.2 Impairment evaluations

The 4th edition of the NSW workers compensation guidelines for the evaluation of permanent impairment (the 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 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 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.

Specific codes are allocated to services provided by ENT specialists and psychiatrists.

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

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

WIRO is not able to reimburse a fee that exceeds any maximum fee for a service that exceeds the maximum fee fixed for the provision of that service fixed by SIRA 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 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 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 paragraph 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 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 Schedules 1 and 2 of the Fees Order relevant to the year of the provision of the service.

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

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.

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*.

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.

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 paragraph 5.1.3 above before incurring a fee.

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.

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.

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

5.1.6.4 Medical examination cancellation fees

Cancellation fees may be incurred when a worker is "unreasonably late" for an examination appointment or fails to attend an examination appointment arranged by a Lawyer.

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 WIRO.

WIRO 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 met by WIRO.

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

5.1.7 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.

WIRO 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 a WIRO ILARS grant of funding.

WIRO 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.

5.1.8 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.

WIRO has adopted 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.

5.1.9 Categories where fees are not fixed by SIRA

WIRO 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.

Where a maximum fee is not fixed by SIRA for a medical report or assessment, 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 the examination.

WIRO may from time to time issue guidance material about fees or a range of fees for certain services.

5.2 Counsel

5.2.1 Funding principles

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

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

Counsel must be a WIRO Approved Barrister (exceptions to the choice of counsel may apply with respect to matters outside the jurisdiction of the WCC).

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

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

5.2.2 Scope of funding

WIRO may fund counsel briefed by Lawyers to:

- Give legal advice
- Appear as an advocate and represent a client in a teleconference, conciliation conference or arbitration 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 WIRO 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 a WIRO Principal Lawyer.

5.2.3 Fees for counsel

Fees for counsel are set by WIRO in the **Disbursements Schedule** in the [ILARS Grant Amount Guide](#).

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

WIRO is not able not meet GST on counsel's fees.

5.2.4 Arbitration hearings or special fixtures

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

5.2.5 Complexity increases

WIRO 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 WIRO by the Lawyer *prior to the issuing of a tax invoice*.

5.2.6 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 [ILARS Grant Amount Guide](#).

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

Where WIRO 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).

5.2.8 Conditions on payment of counsel's fees for appeals

The Lawyer should make counsel aware of the funding policy 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 the WIRO Policy.

Where counsel's advice is obtained in support of a request for full funding, WIRO will pay counsel's fees for the advice regardless of whether approval of full funding is provided.

5.2.9 Attendance of Lawyers at teleconferences and conciliation/arbitration hearings

WIRO expects instructing solicitors to be present at teleconferences and conciliation conferences and arbitration hearings when counsel have been briefed.

WIRO 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 this Policy.

5.3.2 When travel is covered by WIRO

Travel and associated expenses will be paid by WIRO 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 WIRO)
- A conciliation and arbitration hearing in the WCC
- A Court hearing associated with an appeal from a decision of the WCC.

5.3.3 When travel is not covered by WIRO

Travel and associated expenses will not be paid by WIRO 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 an Approved Medical Specialist (AMS) or Medical Appeal Panel (MAP) appointed by the WCC.

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 AMS or MAP 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 WIRO 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** in the **ILARS Grant Amount Guide**. **Accounts and receipts** must be provided to substantiate all purchased services.

WIRO 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 WCC 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'.

WIRO 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). Lawyers should note that the Schedule includes a GST component included in the amounts set.

WIRO can not pay the GST on Interpreter's fees.

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 **ILARS Grant Amount Guide**.

Country or interstate loadings are treated as a disbursement by WIRO. WIRO 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 WCC 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 WCC 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 WCC, 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, WIRO 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** in the **ILARS Grant Amount Guide**.

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

If a Lawyer is in doubt as to whether an expense will be reimbursed or paid by WIRO, the Lawyer should first check the **Disbursements Schedule** in the **ILARS Grant Amount Guide** or discuss the matter with the ILARS Principal Lawyer prior to incur

This version of the WIRO Funding Policy is published as of 2 September 2019 and will be updated periodically.

To confirm if this is the current version consult the WIRO website www.wiro.nsw.gov.au