

**QUESTION AND ANSWER SESSION OF THE  
INJURY COMPENSATION COMMITTEE MEETING HELD ON  
4 SEPTEMBER 2013 ATTENDED BY MR KIM GARLING OF WIRO**

1. **What is the current policy, if any, on “repayment” to ILARS of grants where a Work Injury Damages claim is pursued post a permanent impairment claim (refer letter from WIRO dated 7 May 2013: “*In the event that the assessment obtained attains the threshold for a Work Injury Damages Claim and your client decides, on advice, to proceed with such a claim, any moneys paid pursuant to this approval are to be repaid within 14 days of having lodged a Statement of Claim in a court of competent jurisdiction.*”**
  - a. **If there is such a policy where does it reside?**
  - b. **Does the same thing apply with third party common law?**

**Answer:** That is not the policy of my office. I was unaware of this letter however I have now located it and will have the decision rectified. Obviously where the worker does recover a disbursement from another source which my office has funded it should be repaid.

2. **Can the ILARS Application form be simplified for PI claims for Goudappel type matters (ie pre 19 June 2012 proof of claim, 11% WPI or >10% + s 67)?**

**Answer:** It is my view that the information sought is no more than that which should be being conveyed to the client to satisfy the requirements contained in the *Legal Profession Act 2004*.

3. **Why can't retrospective grants be made where a grant for preliminary investigation is granted and the claim proceeds without further grant to the WCC?**

**Answer:** The policy of this office is that where a grant for preliminary investigation is made then the lawyer is authorised to proceed to make the claim and then to notify my office.

4. **Is a costs regime likely to be issued for the future, if so when? Spending an inordinate time on Applications only to have to replicate the information in an ARD is time consuming and unremunerated.**

**Answer:** I do not agree that such a task is time consuming and the reports I have received from many lawyers is that it is a simple cut and paste process. Subject to the restrictions on the funding imposed by the Government, I would hope to include a fixed fee for completing the Application even if assistance is declined.

5. **What is WIRO's explanation for the downturn in business in the WCC? They are receiving about 20% of pre 19 June 2012 filings.**

**Answer:** I am not a soothsayer however it may reflect the impact of the whole person impairment threshold, the work capacity process and the change in the attitude of many insurers where there is a more receptive approach to sensible resolution. Certainly I have suggested a more economic approach.

6. **Is an ILARS Panel member conference or meeting likely to be held in the future? Regional and metro lawyers are keen to meet and get an opportunity to hear from the IRO and WIRO as to the future and what they can do to improve their practices.**

**Answer:** My request for funding for this purpose was refused by the WorkCover Authority which provides the funding for my office.

7. **“Reasonable prospects”: differing standards – what can be done to assure conformity amongst ILARS Assessors on “reasonable prospects”. Eg treatment disputes where insurer refuses request for surgery and insurer indicates they are obtaining an IME where treating surgeon provides reasons for surgery.**

**Answer:** There is an internal review process about the standard however as the applications are reviewed by individual lawyers in my office there will always be differing views.

8. **Expedited matters? How do we overcome the backlog in the Commission in your view.**

**Answer:** I have proposed an early and simple resolution process however again the WorkCover Authority has refused to approve it.

9. **Under what circumstances does the WIRO intend to take over advocacy on behalf of a worker once an application for funding is received?**

**Answer:** If this is supposed to raise an old issue about my office taking over files from lawyers and conducting the case it is not correct. My office does take a proactive approach where we receive an application where it seems that the matter should be resolved without the need for further expenditure then I do make an enquiry of the insurer as to whether they will reconsider their position. This has proved to be successful and the outcome is favourable for the injured worker.

10. **The issue of level of certification for report fees where the report assesses impairment and must consider causation. Query whether every report fee for a lump sum should be certified at least in the moderately complex category (fee of \$1040.40) rather than the standard report rate typically granted.**

**Answer:** I do not agree. The gazetted Order applies.

11. **In light of recently published decisions from WIRO and in particular the decision of Mr Molloy does WIRO have any plans to seek to have all work capacity decisions reviewed? If not, is WIRO prepared to provide funding for law firms to lodge an ARD on the basis that having no valid work capacity decision the insurer has invalidly cut weekly payments?**

**Answer:** It is not my function to encourage injured workers to take any particular action.

12. **Could WIRO please confirm the current status in relation to uplifts for complexity. Will WIRO consider applications for an uplift on fees for**

**complexity. If so, will this be able to be done retrospectively (noting that the degree of complexity can often arise at a late stage)?**

**Answer:** I will always consider reasonable requests from lawyers where circumstances change.

- 13. In clause 3.3 of the Agreement for the Provision of Legal Services to Legally Assisted Persons it prohibits solicitors from briefing counsel without the express consent of WIRO. Does this mean WIRO will be paying for counsel on top of the usual grant to the law firm?**

**Answer:** Correct.

- 14. The last time Mr Garling attended the ICC he indicated that should the Goudappel decision go in the favour of the injured worker there would be no guarantee that WIRO would automatically provide a grant to each and every claim for whole person impairment. It was suggested that there may be some kind of cost/benefit analysis to look at refusing grants for claims for low WPIs. In light of the recent WIRE, WIRO is now providing grants for Goudappel effected claims. Is WIRO, or does WIRO intend on, introducing a policy like this?**

**Answer:** I have published the policy on “Goudappel” matters. I am hopeful that insurers will recognise the economic benefits for the Fund in resolving meritorious claims quickly.

- 15. It is understood WIRO has paid out only a small proportion of the amount budgeted for ILARS grants. Why are so few ILARS grants being sought and matters being contested?**

**Answer:** Good question. I suspect poor work practices (but not all) of the approved legal service providers is a major reason.

- 16. Where we have a s 74 notice for a worker and seek a grant of legal assistance from WIRO-ILARS, we are required to show “reasonable prospects” of success. This requires us to open a file, take fairly detailed instructions in the form of a Statement (usually), assess the notice, and then complete an Application for a Grant which is 14 pages long and takes about 1 hour of concentrated time to complete sufficiently to relay the picture to ILAR.**

**All in all it takes about 3 hours of our time. We lodge the Application form and then are getting back emails form WIRO saying “We’ve spoken to the insurer and resolved it”. There is no longer an issue. Whilst this is a fantastic result, the lawyers are putting in all of the time and not getting paid. (several examples available). What is WIRO proposing to do about this? – if we were able to resolve without the Grant then we would attempt to do so but again – we are not getting paid. This is not an ideal or acceptable situation despite the fact that the worker gets early resolution.**

**Answer:** See the answer to Question 4.

- 17. Would it be possible to back the approval to the date of lodging the WIRO application rather than the grant of approval noting that a 15 business day turn-around is being quoted at present. My clients who need urgent**

medical treatment and wants to lodge a review with the insurer don't enjoy being told they have to wait 3 weeks for a decision from WIRO and, unless the insurer changes its mind in the review, another 12 months (following a WCC determination) before a decision will be made on the surgery recommended by their treating specialist. This timeline doesn't even take into account waiting time on reports to support the surgery and delay with preparing supportive statements to lodge with the WCC application.

**Answer:** I agree that the grant should be effective from the date of receipt by my office. I will ensure that this is attended to.