



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ICC:JVDPsb141122

14 November 2022

Ms Sarah Harvey
Principal Policy Officer
Independent Review Office
Level 17, McKell Building
2-24 Rawson Place
Haymarket NSW 2000

By email: Sarah.Harvey@iro.nsw.gov.au

Dear Ms Harvey

Draft ILARS Report

Thank you for the opportunity to review the Draft ILARS Report (**Draft Report**). The Law Society's Injury Compensation Committee has contributed to this submission.

We note and appreciate that much of the feedback we provided in our earlier submission has been included in the Draft Report. However, there are two aspects of the Draft Report that we have some concerns with.

Content and form of the ILARS Guidelines

The Law Society is concerned by the suggestion that the ILARS Guidelines (**the Guidelines**) should be treated as a 'high level governance framework for (the) ILARS scheme' and that there should be separate Practice Notes for the business processes and practices of administering and participating in the scheme. We consider that there is a distinct advantage in having one set of Guidelines, subject to regular review, that provide detailed guidance and explanatory material on all aspects of grant funding.

The development of a series of Practice Notes, in addition to the Guidelines, may overcomplicate what is intended to be a simplified process for the provision of legal assistance and advice by Approved Lawyers to injured workers. The proposal also seems at odds with the conclusion reached by the authors of the Draft Review at [46]:

The Guidelines facilitate efficiency by setting out a clear process for applying for funding, including funding extensions. They have been drafted in plain English and are well understood by Approved Lawyers.

In our view, the way in which decisions relate to the administration of the scheme should be made clear in the Guidelines themselves. While we do not oppose the inclusion of a 'clear statement of (the) purpose (of the Guidelines) and an articulation of the principles of governance for the ILARS Scheme', we consider this can be in addition to the information currently contained in the Guidelines.

The Draft Report further suggests that the Practice Notes will be informed by 'industry best practice in conducting a matter'. We have some concerns that a focus on what work is appropriately undertaken by paralegals, law clerks or solicitors, and when counsel should be briefed, runs the risk of undermining the necessary flexibility of the Guidelines. It will be dependent on the particular complexity of the matter (in addition to the instructions of the relevant client) as to who in a particular law firm is equipped to undertake different stages in the process. The size of a firm is also a relevant consideration here, as the question of who undertakes particular work would be different for a sole practitioner as opposed to a larger practice with a number of law clerks and paralegals.

The Law Society is supportive of greater engagement with Approved Lawyers, as well as the proposal for the IRO to enhance knowledge sharing amongst Principal Lawyers to promote consistency in decision-making.

Legal Costs

We do not agree with the finding in the Draft Report at [191] that the Guideline fees as currently set are reasonable. We note that the current fees in the Guidelines originated from Schedule 6 of the *Workers Compensation Regulation 2016*, which was based on an hourly rate of \$250.00 exclusive of GST. Those fees, which are not subject to CPI increases or indexing, have only been increased on two occasions by 15% and 10% in 2012 and 2021 respectively

As noted in our primary submission to the ILARS Review, it is important that Approved Lawyers are paid at competitive rates for their work. We consider there should be the implementation of an annual CPI increase to the Professional Fees to align with the increases made by SIRA to Fees Orders under the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

Thank you again for the opportunity to review the Draft Report. Questions at first instance may be directed to Sophie Bathurst, Policy Lawyer, at sophie.bathurst@lawsociety.com.au or (02) 9926 0285.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanne van der Plaats', written in a cursive style.

Joanne van der Plaats
President