# 1. Introduction

1.1 This protocol outlines the procedures that the Independent Review Officer (IRO) has adopted for the purpose of dealing with enquiries and complaints.

# 2. Legislative Background

2.1 Schedule 5 to the *Personal Injury Commission Act 2020* (PICA) provides for the Independent Review Officer to deal with complaints from claimants about any act or omission of an insurer that affects their entitlements, rights or obligations under workers compensation and motor accident legislation.

2.2 Schedule 5 PICA provides for the IRO:

- 2.2.1 to require an insurer to provide specified information
- 2.2.2 to investigate and report on a complaint, including by making non-binding recommendations
- 2.2.3 to deal with complaints within 30 days unless a longer period is required
- 2.2.4 to decline to deal with complaints where there is a reason for so doing
- 2.2.5 to provide information to the State Insurance Regulatory Authority when requested.



# 3. Principles

2.3 This protocol has been developed having full regard to the Australian/New Zealand Standard 10002:2014 *Guidelines for complaint management in organizations*, (the Standards) and the Australian Government's *Key Practices for Industry-based Customer Dispute Resolution*, released in February 2015, (the Practices).

2.4 The Standards seek to create an environment that encourages feedback and complaints, and sees complaints managed in a timely and fair manner.

2.5 The Practices set benchmarks for accessibility, independence, fairness, accountability, efficiency and effectiveness.

2.6 The IRO adopts the definition of a complaint from clause 4.2 of the Standards. A complaint is "expression of dissatisfaction made to or about and organization, related to its products, services, staff of the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required."

2.7 As an incidental function to dealing with complaints, the IRO may, from time to time, deal with enquiries. An enquiry is defined as "the act of seeking information by questioning."

## 3. Complaints we do not deal with

3.1 The Independent Review Office aims to be accessible and provide assistance to those who contact us wherever possible. Sometimes we are not able to assist those who contact us, and where this is clear at the outset, we may decide not to deal with the complaint. Examples of this include:

3.1.1 complaints that would be more appropriately dealt with by another forum, for example, the Personal Injury Commission - in these matters we will provide full referral information to the person making the complaint

3.1.2 complaints that fall outside the jurisdiction of the IRO (for example, a complaint made by an employer, or a complaint made by a claimant in an interstate compensation system) - in these matters we will provide full referral information wherever possible

3.1.3 complaints that have been considered by the IRO previously unless new circumstances apply or new information is available

3.1.4 complaints where the claimant has not consented to another person making a complaint on their behalf - in these matters we will provide information about the consent we require before we can act on the complaint

3.1.5 complaints that are frivolous or vexatious.



## 4. Who can make a complaint to the IRO?

4.1 A complaint can be made by a claimant, or their representative (solicitor, union representative, spouse or other). We may request information to demonstrate the claimant has given consent to the representative to make the complaint.

## 5. How to make a complaint to the IRO

5.1 A person can make a complaint by telephone, by email or through using our online form.

5.2 In addition to providing identifying information, we will generally ask the person making the complaint to:

5.2.1 provide a summary of their complaint

5.2.2 outline the steps they have taken to resolve the complaint with the insurer

5.2.3 provide information about solution they are seeking for their complaint

5.2.4 attach any documents relevant to the complaint.

5.3 Where the person making the complaint has not taken steps to solve a complaint with the insurer, we will generally ask that the person contact the insurer before we deal with their complaint. However, this is at our discretion, and if our view is that the person making the complaint requires our assistance to pursue it, we will deal with their complaint.

## 6. How the IRO deals with complaints

6.1 After receipt of a complaint, we will make an assessment of the appropriate method for dealing with the complaint. We aim to complete the assessment within 2 business days of receipt. In many matters (for example where we received a complaint over the telephone) we are able to assess the complaint immediately.

6.2 When the complaint is one we can deal with, we have 2 primary methods:

6.2.1 Fast and Fair Solutions Method, where the IRO works quickly to reach a fair and reasonable solution to the complaint by exchanging information between the person making the complaint and the insurer and assisting in developing options to solve the complaint

6.2.2 IRO Investigation Method, a more formal model, where the IRO requests information, documents, and/or statements from the person making the complaint and/or the insurer, and makes findings (including reasons) and non-binding recommendations for a fair and reasonable solution.

6.3 We may use either or both methods if that will assist in achieving a fair and reasonable solution to the complaint.

## 7. Fast and Fair Solutions

7.1 The Fast and Fair Solutions Method includes the following steps:

7.1.1 the receipt and assessment of a complaint (see above)

7.1.2 the request for a response from the insurer

7.1.3 the assessment as to whether a fair and reasonable solution has been reached or whether further escalation is required before finalising the complaint.



<u>Request to insurer – Notice of Complaint</u>

7.2 Where a complaint has been assessed to be handled under our Fast and Fair Solutions Method, we will email a <u>Notice of Complaint</u> to the insurer.

7.3 A Notice of Complaint will generally contain:

7.3.1 a summary the complaint and information about the solution the person making the complaint is seeking

7.3.2 a request for information from the insurer to respond to the complaint including questions that will assist us to consider complaint

7.3.3 a request that the insurer consider a fair and reasonable solution to the complaint.

7.4 The insurer will be required to provide a response to the Notice of Complaint within two business days. If a Notice of Complaint is sent after 5pm, it will be deemed to have been received the following business day.

7.5 From time to time, IRO may receive complaints in that require an urgent response. We may request that an insurer respond sooner than two business days in these matters

7.6 Some Notices of Complaint will request information that an insurer may not be able to obtain within two days (examples may include where there is staff member absent or a response requires liaison with an employer). If an insurer cannot respond to the entirety of a Notice of Complaint within two business days, the insurer will be required to provide an interim response setting out the information at hand, and a suggested plan of action to respond to the balance of the Notice of Complaint.

Assessing the response

7.7 When we receive a response to a Notice of Complaint, we will examine the response to ensure all matters have been addressed, and assess whether the response and proposed solution are fair and reasonable.

7.8 Common solutions proposed by insurers include:

- 7.8.1 agreeing to provide a payment that the claimant is entitled to (for example, agreeing to recalculate weekly payments)
- 7.8.2 agreeing to provide another benefit that the claimant is entitled to (for example, approving medical treatment)
- 7.8.3 taking other action that responds to the complaint (for example, rearranging a medical examination)
- 7.8.4 providing additional information to explain the insurer's actions and respond to the complaint



7.9 We will also discuss the response with the person making the complaint to assess whether it responds to their concerns and provides a solution that is accepted by the claimant.

7.10 In considering whether the response is fair and reasonable, we will consider any relevant matter, including the following matters:

- 7.10.1 whether the response is consistent with the law
- 7.10.2 whether the response is consistent with relevant Guidelines and Standards
- 7.10.3 whether the response properly considers the individual circumstances of the complaint and the claimant
- 7.10.4 whether the response proposes an outcome which is consistent with similar matters, including consistency with views expressed previously by the IRO
- 7.10.5 whether the response is consistent with good insurer practice.

7.11 Sometimes, we may require additional information from the insurer at this stage to clarify matters that may remain outstanding.

Escalation of Complaint

7.12 We may issue an Escalation of Complaint in any of the following circumstances:

7.12.1 there has been no response to the Notice of Complaint after five business days since the notice was issued (we will follow up our Notice of Complaint with the insurer if there has been no response and before issuing an Escalation)
7.12.2 the response to the Notice of Complaint is assessed as not fair and reasonable.

7.13 An Escalation of Complaint will generally contain:

7.13.1 where the escalation relates only to a complaint where there has been no response, a summary of the steps taken to obtain a response and a further request for response
7.13.2 where the escalation relates to a response has been assessed as not fair and reasonable:
7.13.2.1 a summary of the information obtained about the complaint obtained to date
7.13.2.2 a statement about the reasons why the response has been assessed as not fair and reasonable
7.13.2.3 a request for a further response to the complaint (which may include providing additional information to justify any solution proposed by the insurer and reasons, where the insurer does not agree with our assessment, as to why the insurer's response is fair and reasonable).

7.14 Where we IRO issue an Escalation of Complaint, it is expected that the response will be provided by a representative of the insurer who is senior to and independent of the original person who responded to the Notice of Complaint.

7.15 The insurer will be required to respond to the Escalation of Complaint within two business days.

7.16 Where necessary, we may require additional information from the insurer to clarify matters that may remain outstanding.

Finalising a Complaint dealt with under the Fair and Fast Solutions Method

7.17 We will finalise a complaint dealt with under the Fast and Fair Solutions Method as promptly as possible, and in any event within 30 days. In the rare case that a longer period is required to deal complaint, we will notify person making the complaint and the insurer of the additional time required.

7.18 Common complaint solutions include:

7.18.1 the claimant and the insurer agreeing on a solution
7.18.2 the insurer providing additional information to substantiate their decision or conduct is fair and reasonable

7.19 Where a solution cannot be agreed and there is no other information or action that will assist, a complaint may be finalised by providing information about our inquiries and

any options for the person making the complaint. This may include, in workers compensation matters, referring a claimant to the Independent Legal Assistance and Review Service to obtain independent legal assistance in investigating a claim and raising a dispute with the Personal Injury Commission.

7.20 Where a solution cannot be agreed and the we are concerned that the insurer's response is incomplete or not fair and reasonable, we may undertake a rapid investigation to make findings and recommendations to solve the complaint.

7.21 We will provide advice to the person making the complaint and the insurer about the finalisation of the complaint, including information confirming any agreed solution.

## 8. IRO Investigation

8.1 We may deal with a complaint by undertaking an IRO Investigation. This includes rapid investigation of complaints that we think will not be solved using the Fast and Fair Solution Method.

8.2 We will generally not deal with a complaint by way of IRO Investigation where there are issues of liability in dispute that would be best determined by the Personal Injury Commission. For example, we would not conduct an IRO Investigation into causation of a psychiatric injury.



Request to insurer - Notice of Investigation

8.3 Where a complaint has been assessed to be handled as an IRO Investigation, we will email a Notice of Investigation to the insurer.

8.4 A Notice of Investigation may contain:

- 8.4.1 a summary of the complaint and any information or other material obtained to date
- 8.4.2 a request for information (or further information) from the insurer to respond to the complaint including questions that will assist us to consider the complaint
- 8.4.3 a request for evidence to substantiate the insurer's position, such as file notes, letters and other records and statements from persons with responsibility for handling the claim or complaint
- 8.4.4 a request that the insurer consider a fair and reasonable solution to the complaint.

8.5 The insurer will be required to provide a response to the Notice of Investigation within five business days. If a Notice of Investigation is sent after 5pm, it will be deemed to have been received the following business day.

8.6 Upon receipt of the response to the Notice of Investigation, we may ask supplementary questions and seek additional information. We may also seek to meet with the insurer to discuss the response.

Assessing the response

8.7 Where, during or at the completion of our investigation, the insurer offers a solution that is accepted by the claimant or person making the complaint and is otherwise fair and reasonable, we may finalise the complaint without making a report. We will provide the person making the complaint and the insurer with written advice, including to confirm any agreed solution.

8.8 Where, at the completion of our investigation the complaint remains unsolved, we will complete a preliminary investigation report summarising the complaint and issues of concern, the evidence provided by the claimant or person making the complaint and the insurer, our findings (including the reasons for those findings) and our draft recommendations.

8.9 The preliminary investigation report will be shared with the insurer and person making the complaint simultaneously. Each party will be provided with an opportunity (generally 5 business days) to comment on the preliminary investigation report.

Finalising a Complaint dealt with under the IRO Investigation Method

8.10 After providing each party with an opportunity to comment on the preliminary investigation report we will, as soon as practicable, complete the final investigation report. We will consider any comments received in finalising the report. Where more than 30 days is required to deal with the complaint, we will notify person making the complaint and the insurer of the additional time required.

8.11 A copy of the final investigation report will be provided to both the person making the complaint and the insurer.

8.12 When we make a recommendation for specified action to be taken by the insurer, we will request a response to the recommendation within 20 business days.

8.13 We may publish the final investigation report, including on our website. Any public version of the report will not identify the claimant or person making the complaint.

8.14 Where an Insurer fails to accept recommendations contained in a report of an investigation, we may report that fact in our Annual Report and/or on our website.

## 9. Enquiries

9.1 As an incidental consequence to dealing with complaints, we receive enquiries. An enquiry is defined as “the act of seeking information by questioning.”

9.2 Generally, enquiries will be dealt with by responding to a query without the need to alert any insurer or other agency. Common outcomes include providing information about how to make a claim for compensation, or referring the person making the enquiry to the insurer or another agency.

9.3 However, where the enquiry concerns a specific claim, we may ask the insurer for information, to better inform how to deal with an enquiry. For example, a claimant may

not know the date of a past claim for compensation. Where we request information to resolve an enquiry, we will send an email to or telephone the insurer to clarify the issue raised. We will not send a Notice of Complaint.

## 10. Information Sharing and Confidentiality

10.1 Schedule 5 PICA requires the IRO to provide SIRA with the information SIRA requires and requests for the purposes of the exercising its functions.

10.2 The IRO and SIRA have an agreement about the information to be provided to meet this obligation.

10.3 We are also committed to providing regular periodic reports to insurers when requested summarising the number of complaints an insurer has received and the outcomes of those complaints.

10.4 When making a complaint to the IRO, the claimant (or person making the complaint on their behalf) is consenting to us sharing that information for the purpose of fulfilling these legislative and related functions.

10.5 The IRO Privacy statement provides a general overview of the ways that the IRO collects and deals with information provided by persons who make complaints.

10.6 From time to time, we may bring to the attention of SIRA a specific complaint or complaints, including the following examples:

10.6.1 Complaints of systemic failures to comply with legislation or a Guideline. For example, a notification letter to a claimant that is non-compliant with a relevant Guideline;

10.6.2 Complaints of an alleged regulatory breach that caused significant harm to a claimant. For example, where a failure to determine a claim within timeframes leads to financial hardship.

10.7 We will not generally report the substance of enquiries to external parties. However, we may provide high level and de-identified information about the nature of enquiries received.

## 11. Unreasonable Conduct

11.1 We are committed to being accessible and responsive to all people who use our services.

11.2 When people act unreasonably in their dealings with us, their conduct can significantly affect our performance. As a result, the WIRO will take proactive and decisive action to manage the conduct of any person that negatively and unreasonably

affects the health and safety of our staff or the effective and equitable use of our resources.

11.3 Our policy, WIRO Unreasonable conduct policy and procedure, provides more information about how we manage unreasonable conduct.

## 12. Feedback About Our Services

12.1 We are committed to maintaining and improving the quality of our services through feedback from the people who use them. We value all feedback which can be in the form of complaints, feedback or compliments.

12.2 If any party is not satisfied with how a complaint has been handled, they are encouraged to speak with the IRO officer who has conduct of the complaint about any concerns.

12.3 If any party to a matter has a complaint about the IRO service or conduct, and it cannot be resolved with the IRO officer, that party can escalate the complaint and ask to speak with their supervisor.

12.4 Any party to a mater can request an internal review of a decision of the IRO.

12.5 Our policy, Complaints and Compliments, provides more information about how we deal with complaints and compliments about our services.