

Since March 2020, the Workers Compensation Independent Review Office (WIRO) has recorded details of every complaint, enquiry and Independent Legal Assistance and Review Service (ILARS) funding application with a COVID-19 related issue to track the impact of the virus on injured workers and to inform policy and system responses to COVID-19.

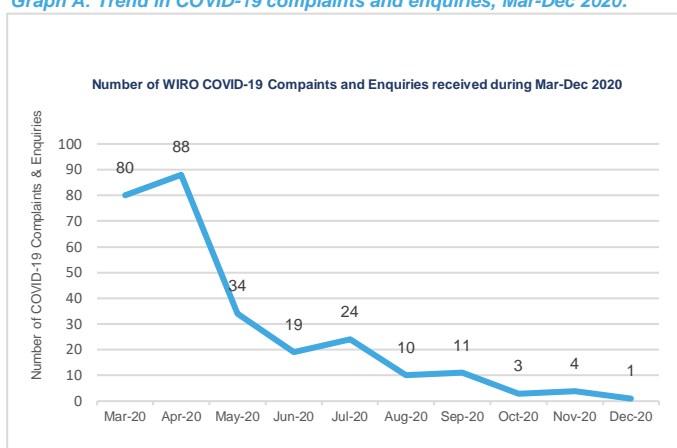
This summary report presents WIRO’s data on COVID-19 matters from 1 March – 31 December 2020. It consolidates data and information reported by WIRO in weekly and monthly reports during 2020.

WIRO received 128 complaints, 146 enquiries and 30 grant application matters with a COVID-19 issue in the 10-month period between March and December 2020.

The number of complaints and enquiries has gradually reduced from a peak of 88 matters in April 2020 to 1 matter in December (see Table 1 and Graph A). This decline is likely due to a combination of factors including decreased infection numbers in NSW and various government responses such as the increased availability of telehealth services and legislative changes introducing a rebuttable presumption that various categories of workers who contract COVID-19 do so in the course of their employment.

Table 1: COVID-19 complaints and enquiries, Mar-Dec 2020. **Graph A: Trend in COVID-19 complaints and enquiries, Mar-Dec 2020.**

Months	Complaint	Enquiries	Total
Mar	21	59	80
Apr	43	45	88
May	20	14	34
Jun	12	7	19
Jul	13	11	24
Aug	8	2	10
Sep	5	6	11
Oct	2	1	3
Nov	3	1	4
Dec	1		1
Total	128	146	274



Some of the most common complaints and enquiries raised with WIRO in 2020 (see Table 2) include issues about:

- attending medical appointments and treatment, including complaints about being required to travel and attend medical examinations and issues about obtaining certificates of capacity - see case studies 4 and 5.
- suitable duties, including enquiries about the interaction between Job Keeper and weekly payments, concerns about workers compensation entitlements where a worker’s employer had ceased operations and suitable duties were no longer available and complaints about changes to suitable duties where employers sought to redeploy injured workers - see case study 3.
- the various effects of periods of requisite self-isolation due to possible exposure to COVID-19 - see case study 1.

Table 2: Top COVID-19 issues, complaints and enquiries, Mar-Dec 2020.

Top 3 COVID-19 Issues	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	% COVID-19 Matters To Date
Issues attending medical treatment/appointment	26	25	18	8	11	5	6		1	1	36.9%
General Enquiry	28	26	6	6	8	2	4		2		29.9%
Concerns about suitable duties	21	31	7	4	3	2	1				25.2%

The monthly number of new ILARS funding applications relating to COVID-19 has remained relatively constant between 6 and 1 applications received each month (see Table 3). The issues raised in these applications can generally be categorised as follows:

- COVID-19 infection cases, where the injured worker has contracted COVID-19 and there are disputes about causation or whether other conditions/symptoms relate to the virus - see case study 7.
- remote working cases, where the worker has been injured while working from home in compliance with workplace directives or public health orders - see case study 6.
- psychological cases, where the worker claims a psychological injury related in some way to COVID-19 - see case study 8.

Table3: COVID-19 ILARS applications, Mar-Dec 2020.

Applications for Grant funding - WIRO Independent Legal Assistance and Review Service											
Months	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Total		2	2	1	4	4	6	2	5	4	30

WIRO has continued to provide comments and support to the development of regulations and guidance that respond to COVID-19, informed by the cases lodged by injured workers and their representatives. This includes providing feedback on the *Workers Compensation Amendment (COVID-19 Weekly Payment Compensation) Regulation 2020* published in October 2020 and most recently about updated guidance for medico-legal examinations issued by the State Insurance Regulatory Authority in January 2021.

Case Studies

1. Self – isolation

A worker complained that they had suffered a psychological injury and financial distress as the result of undergoing numerous COVID-19 tests following requisite screening checks at their workplace entrance. The worker was required to self – isolate after each test while awaiting the results and had exhausted their leave entitlements. After WIRO intervention the insurer arranged for a rehabilitation provider to liaise with the employer and the treating doctor to reach an agreement which would enable the worker to return to work. WIRO also advised the worker about how to complete a claim for compensation.

2. General enquiry about making a claim

The worker had visited the Crossroads Hotel, which was subsequently identified as the source of a COVID-19 cluster. After testing negative for the virus, the worker had attended work before being advised by NSW Health to self-isolate for 14 days. The worker's employer instructed fellow workers who had been in contact with the worker to go home and get tested, and the worker reported being aware of emails that stated they are a disruption and inconvenience. The worker reported feeling bullied, harassed, and terrified to return to work. The worker was referred to WIRO by SafeWork. WIRO provided information about the workers compensation scheme, including the requirement for a worker to be injured to be entitled to compensation. WIRO noted that an injury may include a psychological injury. WIRO also provided information about how to make a claim for compensation, and recommended the worker speak to their treating doctor.

3. Suitable duties/JobKeeper

An injured worker who had been performing suitable duties and receiving weekly payments at the rate of 95% of preinjury average weekly earnings was stood down due to COVID-19 and put on JobKeeper. The worker complained to WIRO that they were not receiving a top up payment from the insurer for the difference between the JobKeeper payment and their previous weekly payment. WIRO's enquiries with the insurer revealed the employer had not passed on the worker's certificate of capacity or payslips. After WIRO intervened the insurer arranged for an immediate back payment and requested the employer to provide it with regular payslips.

4. Delay in obtaining certificate of capacity

The injured worker travelled to New Zealand to visit their sick sister and was unable to return to NSW due to restrictions imposed in response to COVID-19. The worker complained to WIRO that the insurer had suspended their weekly payments because they were overseas and unable to return. Enquiries with the insurer revealed that weekly payments had stopped because the worker had not supplied certificates of capacity from their treating doctor. Following WIRO intervention the insurer contacted the worker and treating doctor and arranged for telehealth consultations to take place to facilitate certificates of capacity. Weekly payments to the worker were reinstated and back payments made.

5. Issue attending a medical appointment due to COVID-19 travel restrictions

An Approved Lawyer made a complaint on behalf of an injured NSW worker who resides in regional Victoria. The insurer had made arrangements for the worker to attend an independent medical examination (IME) in Sydney and would not agree to a telehealth assessment as the worker had sustained physical injuries requiring an in-person clinical examination. Due to COVID-19 related travel restrictions between Victoria and NSW, the worker was concerned they would be unable to attend the appointment. After WIRO intervened the insurer arranged an IME appointment in Melbourne.

6. Application for funding – remote working

An Approved Lawyer applied for a grant of funding for a worker who was required to job share with a colleague and work from home some days following workplace changes resulting from COVID-19. The worker reported they were in their garden talking on the phone to their colleague about the daily handover of work when they had a fall and suffered a significant back injury. The insurer denied liability on the basis the injury did not arise out of or in the course of employment or that the employment was not a substantial contributing factor to the injury. WIRO granted funding for the Approved Lawyer to conduct early enquiries and obtain counsel's advice with respect to the worker's prospects of success.

7. Application for funding – disease injury

An Approved Lawyer applied for a grant of funding for a worker who claimed to have contracted COVID-19 on an international flight to Australia during the course of their employment as a flight attendant. After testing positive for the virus, the worker began to experience symptoms related to a condition not ordinarily attributed to the virus. The insurer had accepted liability for weekly payments and medical expenses relating to COVID-19 but denied liability for the treatment expenses for the subsequent condition on the basis there was no evidence the condition resulted from COVID-19. WIRO granted funding for the Approved Lawyer to conduct further investigations including obtaining a medico legal report to provide an opinion about the worker's condition.

8. Application for funding – psychological injury

An Approved Lawyer applied for a grant of funding for a worker who claimed to have suffered a psychological injury following workplace changes resulting from COVID-19. The worker claimed they suffered stress and anxiety caused by months of uncertainty, poor communication, intimidation and changes to working hours and pay. The insurer had denied liability for the claim partly on the basis that any psychological injury sustained was caused by the employer's reasonable action in transferring sales from face to face to sales using virtual technology. WIRO granted funding for the Approved Lawyer to conduct enquiries, including obtaining medical evidence and to provide legal advice.