

Since March 2020, the Independent Review Office (IRO) 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 the IRO's data on COVID-19 matters from 1 July to 31 December 2021.

Complaints and enquiries

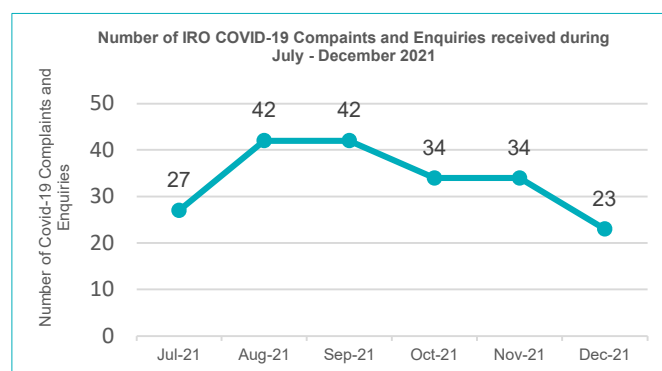
The IRO received 74 complaints and 128 enquiries with a COVID-19 issues in the six (6) month period from July 2021 to December 2021 inclusive. Since 1 March 2020, 217 complaints and 291 enquiries with a COVID-19 issue have been received.

Complaints and enquiries remained at an elevated level throughout the second half of 2021 coinciding with the outbreak of the Delta variant of COVID-19 in New South Wales and related Public Health Orders restricting movements and activities at this time. Enquiries were higher in the months August to November following the announcement of Public Health Orders requiring workers to be vaccinated in order to undertake certain types of work, or to be able to enter specified premises (see Table 1 and Graph A).

Table 1: COVID-19 complaints and enquiries, July-Dec 2021.

Months	Complaints	Enquiries	Total
July	14	13	27
August	18	24	42
September	16	26	42
October	4	30	34
November	12	22	34
December	10	13	23
Total	74	128	202

Graph A: Trend in COVID-19 complaints and enquiries, July - December 2021.



In the second half of 2021 the nature of the complaints and enquiries received (see Table 2) changed from a predominance of issues related to attending medical appointments and treatment to:

- reduced availability of suitable duties due to Public Health Order restrictions – see case studies 2 and 4.
- claiming compensation whilst in isolation – see case study 5.
- concerns about COVID vaccine mandates – see case study 6.

Table 2: Top COVID-19 issues, complaints and enquiries, July-Dec 2021 and cumulative from 1 March 2020 to 31 December 2021

Top COVID-19 Issues Complaints and Enquiries	July	Aug	Sep	Oct	Nov	Dec	1 March 2020 - 31 Dec 2021	% COVID-19 matters to date
Issues attending medical treatment/appointment	13	23	15	4	3	3	174	35%
Seeking general claims information	9	14	5	2	6	1	126	25%
Concerns about suitable duties	2	4	2	1	3	1	86	17%
Related to COVID vaccines			12	17	19	12	60	12%
Claiming compensation while in isolation	3	1	8	10	3	6	54	11%

ILARS applications

The IRO received 125 ILARS grant application matters in the six (6) month period from July 2021 to December 2021 inclusive. The monthly number of new ILARS funding applications relating to COVID-19 remained relatively low until October – December 2021, with more than 100 applications being received (see Table 3). Sixty (60) per cent of all COVID-19 related ILARS applications made since 1 March 2020 were received in this period.

Table 3: COVID-19 ILARS applications, July-December 2021 and cumulative from 1 March 2020 to 31 December 2021

Month	July	August	September	October	November	December	1 March 2020 - 31 December 2021
Total	1	6	6	42	46	24	183

A majority of ILARS applications in this period involve workers claiming to have suffered a psychological injury related in some way to COVID-19. However, from October 2021 the most common reported injury was anxiety and depression caused by the implementation of vaccine mandates by some employers – see case study 7.

There was a smaller cohort of applications related to workers whose claims to have caught COVID-19 during the course of employment were declined by insurers. This included matters where the worker may have expected to be the beneficiary of the presumption in section.19B(1) of the *Workers Compensation Act 1987* (1987 Act) – see case study 3.

The IRO also records information about any ILARS grants impacted by COVID-19. At the time of finalising this report (23 January 2022), 1175 ILARS grants were identified as impacted by COVID-19. More than 500 of these matters (521 matters) were recorded as delayed because workers could not undergo an Independent Medical Examination or be examined by a Medical Assessor. Another 283 matters recorded delays in medico-legal and other investigations by Approved Lawyers acting on behalf of workers.

COVID-19 Case Studies

Case study 1 - Decision of the Personal Injury Commission - Sara v G and S Sara Pty Ltd [2021] NSWPIC 286

This recent important decision of the Personal Injury Commission (Commission) dealt with the issue of whether the deceased worker had contracted COVID-19 in the course of his employment with the respondent. An ILARS Grant of Funding was approved by the IRO for two sets of proceedings which the Commission had ordered be heard together. In the first matter the applicant (the worker’s spouse) sought weekly compensation for the period from 24 July 2020 when the worker was diagnosed with COVID-19 in New York until his death in November 2020, together with medical expenses alleged to be in excess of \$11 million (US). In the second matter the applicant claimed the lump sum death benefit.

The respondent denied liability on the basis the deceased person was not a ‘worker’ and that the injury did not arise in the course of employment with the respondent, alleging that the deceased person was working for another related but distinct US company at the time he contracted COVID-19 or that the virus was contracted in a social setting. The respondent was part of a group of companies that provided dental technician products and services across the health care sector in Australia and the United States.

The Commission found that that the deceased person probably contracted COVID-19 during the period of travel between Sydney and New York with a transit stop in San Francisco. The Commission also determined that the deceased person was a worker employed by the respondent who would undertake work for the benefit of a wide group of related companies. In these circumstances it followed that the virus was contracted in the course of the deceased person’s employment with the respondent as the respondent did not contest the presumption that arose under section 19B of the 1987 Act.

Case study 2 - Complaint - Unavailability of suitable duties

An injured worker complained that their case manager had indicated their weekly payments would cease at the end of September 2021 and they should apply to Centrelink. The worker had been certified fit for 18 hours work a week and had been provided with suitable duties until the employer’s business had closed as a result of COVID-19. The insurer confirmed to the IRO that it accepted the injured worker had partial incapacity for work as stated on the certificate of capacity. However, the insurer still issued a notice disputing liability pursuant to section 33 of the 1987 Act because the reason the worker could not do suitable duties (COVID-19 Order) was not related to their injury.

The IRO advised the worker that they could request an internal review of the insurer’s decision, contact their employer once fit to resume suitable duties and seek legal advice from an IRO Approved Lawyer.

Case study 3 - Application for funding – disease injury

An Approved Lawyer sought funding on behalf of a retail worker who maintained they contracted COVID-19 in the course of their employment. The worker’s current claim was for a closed period of weekly benefits and pharmaceutical benefits. The insurer had denied liability despite the worker having the benefit of the presumption in section 19B(1) of the 1987 Act that they had contracted the virus in the course of their employment in the retail industry. The insurer maintained that the worker had contracted COVID-19 from their son rather than at work.

The IRO granted funding for the Approved Lawyer to conduct enquiries including obtaining medical evidence, and to provide legal advice.

Case study 4 – Complaint - COVID-19 Disaster Payment

Suitable duties were withdrawn from an injured worker due to their employer making workplace changes to meet COVID-19 Public Health Orders, and they were on leave without pay for the reduced hours they were able to work. As a consequence, the worker had reduced income, and they successfully claimed the COVID-19 Disaster Payment from the Federal Government. The worker complained that the insurer had advised this sum would be deducted from their remaining weekly payments.

Following the IRO's intervention the insurer accepted that, in accordance with guidance issued by the State Insurance Regulatory Authority, the Disaster Payment should not be considered earnings for the purpose of determining the weekly compensation payment to which a worker is entitled.

Case study 5 - Enquiry - Weekly payments and COVID

A worker who had suffered an injury and was fit to work reduced hours, was in receipt of compensation payments for the hours they were not fit to work. The worker then contracted COVID-19, unrelated to their employment. They lodged an inquiry with IRO asking whether they would still be entitled to weekly payments for those hours they were not fit to work as a result of their injury.

IRO provided information that the worker should still receive payments from the insurer for the hours they could not work due to the work-related injury, and would likely need to take personal leave for those hours they were certified fit to work but unable to do so as a result of COVID-19.

Case study 6 - Enquiry – Entitlement to compensation if injured by COVID-19 vaccine

An inquiry was lodged with IRO on behalf of a worker who felt coerced to have a vaccine by their employer. They wanted to know whether they would be entitled to compensation if they suffered an injury as a result of having the vaccine. IRO provided advice about how to lodge a claim for compensation and confirmed it was a matter for the insurer to determine whether to accept liability.

Case study 7 - Application for funding - Vaccine mandate psychological injury

An Approved Lawyer sought funding on behalf of an education worker who suffered a psychological injury as a result of a vaccine mandate implemented by their employer. The worker was distressed because they could not return to work and were likely to have their employment terminated if they were not vaccinated. The insurer denied liability for the claim on the basis the worker had not suffered an injury in the course of their employment or, if they had, the worker was not entitled to compensation because the whole or predominant cause of the injury was reasonable action taken by the employer with respect to transfer, discipline, dismissal and/or provision of employment benefits.

The IRO granted funding for the Approved Lawyer to conduct enquiries including obtaining medical evidence, and to provide legal advice.