

COVID-19 MATTERS

SUMMARY REPORT | JANUARY TO JULY



Independent
Review Office

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 January to 31 July 2021.

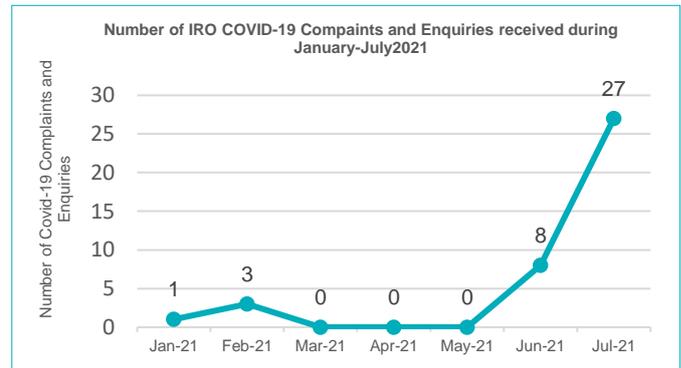
The IRO received 21 complaints, 18 enquiries and 32 grant application matters with a COVID-19 issue in the seven (7)-month period from January to July 2021 inclusive.

There were very few complaints and enquiries in 2021 until an increase in June, coinciding with the outbreak of the virus in Sydney and related Public Health Orders restricting movements and activities at this time (see Table 1 and Graph A).

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

Months	Complaints	Enquiries	Total
January	1		1
February	2	1	3
March			0
April			0
May			0
June	4	4	8
July	14	13	27
Total	21	18	39

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



As in 2020, some of the most common complaints and enquiries raised with the IRO in 2021 (see Table 2) include issues about:

- attending medical appointments and treatment, including complaints about the availability of telehealth consultations and issues about obtaining certificates of capacity - see Case Study 1.
- the effect of COVID-19 restrictions on the injured person's ability to work - see Case Study 2.

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

Top COVID-19 Issues Complaints and Enquiries	Jan	Feb	Mar	Apr	May	June	July	1 March 2020 - 31 July 2021	% COVID-19 matters to date
Issues attending medical treatment/appointment	1	2				6	13	126	39%
General Enquiry		1				1	9	98	30%
Concerns about suitable duties						1	2	75	23%
Claiming compensation while in isolation							3	26	8%

The monthly number of new ILARS funding applications relating to COVID-19 has remained relatively constant between two (2) and 8 (eight) applications received each month (see Table 3).

The majority of ILARS applications in this period involve workers claiming to have suffered a psychological injury relating in some way to COVID-19. A high number of the reported psychological injuries relate to claims of stress and anxiety caused by a workplace allegedly not complying with safety protocols put in place by the government in response to COVID-19 - see Case Study 4.

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

Applications for funding - IRO ILARS								
Month	January	February	March	April	May	June	July	1 March 2020 - 31 July 2021
Total	6	5	8	2	4	3	3	212

The case studies also demonstrate some of the unforeseen impacts of COVID-19 on a worker's entitlement to compensation, from injuries suffered while working at home to the cessation of benefits where a worker cannot return to Australia.

COVID-19 Case Studies

1 Enquiry - issue attending medical appointment

An injured worker with high needs contacted the IRO concerned that they could not consult their treating doctor to update their certificate of capacity due to COVID-19 related travel restrictions. The worker was concerned their weekly payments would be suspended as a result.

The IRO suggested the worker seek a telehealth appointment, and also contact the insurer to see whether they could accommodate the worker's circumstances. Following the IRO's suggestions, the worker succeeded in arranging a telehealth appointment. A certificate of capacity with an extended date of no capacity was subsequently sent by the doctor to the worker, who forwarded the certificate to their insurer.

2 Complaint - denial in determining liability

A worker developed contact dermatitis in 2020 from wearing a face mask at work for long hours in response to COVID-19. They recovered and were fit for duties not requiring a mask so as to prevent a recurrence. When a requirement was again made that masks be worn at work, the worker's doctor downgraded capacity on the basis of preventing a recurrence of dermatitis. The worker complained the insurer had not initially responded to a downgraded certificate of capacity, and then disputed that the worker had no capacity for work as they were not injured.

The IRO requested a timeline from the insurer and information about its decisions. As a consequence, the insurer agreed to make weekly payments for decisions that were outside legislated timeframes. However, the insurer disputed liability for the claim on the basis that the claim was made a preventative measure and not as an injury. The IRO advised the worker about the insurer's response to the complaint and the worker's options to review the insurer's decision.

The IRO has since approved an ILARS grant of funding for an Approved Lawyer to assist the worker, including to commence proceeds before the Personal Injury Commission.

3 Enquiry - delay in obtaining treatment

An injured worker who understood their entitlement to medical treatment expenses expires in September 2021, contacted the IRO to ask whether an extension was possible due to the effect of COVID-19 related travel restrictions. The worker resided near the NSW borders with other states and had been unable to access treatment in these states at various times due to border closures.

The IRO explained that there had been no changes to the legislated time frames for medical treatment in response to COVID-19, and no extension was permitted on this basis only. The IRO suggested the worker explore with their insurer whether any additional weekly payments had been made or may be payable to the worker, which may extend their entitlements to medical expenses.

4 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 from the stress involved in being in a workplace where COVID-19 safety protocols were not followed. The worker, a counsellor, reported that their health and safety were disregarded and their efforts to maintain a COVID safe environment were ignored. The worker had been required to attend meetings with many participants in a small confined indoor space. A diagnosis of adjustment disorder and stress was made, and the insurer accepted provisional liability. The IRO granted funding for the Approved Lawyer to conduct enquiries and provide legal advice.

5 Application for funding - worker unable to return to Australia

An Approved Lawyer applied for a grant of funding to assist a worker who had suffered a knee injury while unloading pallets in 2018. The worker was an overseas citizen in Australia on a student visa. The injury required surgery, pain treatment and exercise physiology. In 2020 the worker returned temporarily to their homeland, however due to COVID-19 and the closure of Australian borders, the worker was not permitted to return to Australia.

The insurer decided not to make weekly payments for reasons including that section 53(1) of the Workers Compensation Act applied, and as the worker ceased to reside in Australia, they are not entitled to weekly payments unless a medical assessor certifies, or the Personal Injury Commission determines their incapacity for work is permanent. The worker had no expected return date to Australia and had not been certified with no work capacity. The insurer also decided the worker was not entitled to medical treatment.

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

6 Application for funding - remote working

An Approved Lawyer applied for a grant of funding for a worker whose was working from home some days following workplace changes resulting from COVID-19. The worker reported that they fell downstairs while moving an item during their lunch break, suffering a foot injury that required surgery. Section 11 of the Workers Compensation Act 1987 provides that compensation is payable for an injury suffered when a worker is temporarily absent from the worker's place of employment during any ordinary recess or authorised absence. The IRO granted funding for the Approved Lawyer to make early enquiries and provide legal advice.